

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION

COUNTY OF WAKE 11 CVS 16896
 11 CVS 16940

MARGARET DICKSON, et al.,

Plaintiffs,

vs.
ROBERT RUCHO, in his
official capacity only as
the Chairman of the North
Carolina Senate
Redistricting Committee,
et al.,

Defendants.

NORTH CAROLINA STATE
CONFERENCE OF BRANCHES OF
THE NAACP, et al.,

Plaintiffs,

vs.
STATE OF NORTH CAROLINA,
et al.,

Defendants.

DEPOSITION OF DALE OLDHAM, ESQ.

9:36 A.M.
WEDNESDAY, JUNE 27, 2012

POYNER SPRUILL
301 FAYETTEVILLE STREET
SUITE 1900
RALEIGH, NC 27601

By: Denise Myers Byrd, CSR 8340, RPR

A P P E A R A N C E S

For the Plaintiffs, NAACP:

SOUTHERN COALITION FOR SOCIAL JUSTICE
BY: ANITA EARLS, ESQ.
1415 West Highway 54
Suite 101
Durham, NC 27707
(919) 323-3380
anita@southerncoalition.org
allison@southerncoalition.org

For the Plaintiffs, Margaret Dickson, et al.:

POYNER SPRUILL
BY: EDWIN M. SPEAS, JR., ESQ.
301 Fayetteville Street
Suite 1900
Raleigh, NC 27601
(919) 783-2881
espeas@poynerspruill.com

For All Defendants:

N.C. DEPARTMENT OF JUSTICE
BY: ALEXANDER McC. PETERS,
SPECIAL DEPUTY ATTORNEY GENERAL
114 W. Edenton Street
Raleigh, NC 27603
(919) 716-6900
apeters@ncdoj.gov

For the Legislative Defendants:

OGLETREE DEAKINS
BY: THOMAS A. FARR, ESQ.
4208 Six Forks Road
Suite 1100
Raleigh, NC 27609
(919) 789-3174
thomas.farr@ogletreedeakins.com

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STIPULATIONS

It is hereby stipulated and agreed between the parties to this action, through their respective counsel of record:

1. That the deposition of the Dale Oldham, Esq., may be taken on June 27, 2012, at 9:30 a.m. in Raleigh, NC, before Denise Myers, CSR 8340, RPR.

2. That the deposition shall be taken and used as permitted by the applicable North Carolina Rules of Civil Procedure.

3. That any objections of any party hereto as to notice of the taking of said deposition or as to the time or place thereof, or as to the competency of the person before whom the same shall be taken, are deemed to have been met.

4. That objections to questions and motions to strike answers need not be made during the taking of this deposition, but may be made for the first time during the progress of the trial of this case, or at any pretrial hearing held before any judge of competent jurisdiction for the purpose of ruling thereon, or any other hearing at which said deposition shall be used, except that objections to the form of the question must be made at the time

1 such question is asked or objection as to the form of
2 the question is waived.

3 5. That the witness reserves the right to read and
4 sign the transcript prior to it being sealed.

5 6. That the sealed original of the transcript shall
6 be mailed First Class Postage Paid or hand-delivered
7 to the party taking the deposition for preservation
8 and delivery to the Court if and when necessary.

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1 DALE OLDHAM, ESQ.,
2 having been first affirmed by the Certified Shorthand
3 Reporter and Notary Public to tell the truth, the whole
4 truth and nothing but the truth, testified as follows:

5 EXAMINATION

6 BY MR. SPEAS:

7 Q. Would you state your name for the record, please.

8 A. Dalton Lamar Oldham, also known as Dale.

9 MR. FARR: Eddie, may I say something for
10 the record?

11 MR. SPEAS: Please.

12 MR. FARR: We have agreed to make
13 Mr. Oldham available because he was involved in
14 drawing certain aspects of legislative maps that
15 are part of the enacted plans and that's why we
16 agreed to have him testify.

17 We're not going to allow him to testify
18 about legal advice he gave to Senator Rucho or
19 Representative Lewis, work product that Mr. Oldham
20 prepared.

21 And also, Senator Rucho and Representative
22 Lewis have waived their legislative privilege, so
23 to the extent he had discussions with them that
24 were not attorney privilege, they've waived their
25 legislative privilege.

1 If he had conversations with other members
2 of the General Assembly, they have not waived their
3 legislative privilege so we will not be -- we will
4 instruct him not to answer questions on that topic.

5 MR. SPEAS: Okay.

6 MR. FARR: Thank you.

7 MR. SPEAS: At the appropriate time, you
8 will -- I understand you will instruct him not to
9 answer questions.

10 BY MR. SPEAS:

11 Q. Mr. Oldham --

12 A. Yes.

13 Q. -- I looked for your biography on the Web and
14 couldn't find it, so let me ask you some background
15 questions.

16 A. Sure.

17 Q. How old are you?

18 A. 5/12/57. That's an impolite question.

19 Q. It makes you how old, since I can't count?

20 A. 55. Thank you.

21 Q. And where were you born?

22 A. Columbia, South Carolina.

23 Q. And where do you reside today?

24 A. 1119 Susan Street, Columbia, South Carolina.

25 Q. Lifelong South Carolina resident?

1 A. I am.

2 Q. And where did you attend undergraduate school?

3 A. University of South Carolina. It's also where I
4 attended law school.

5 Q. And you graduated from undergraduate school when?

6 A. 1980.

7 Q. What was your major?

8 A. Political science.

9 Q. And you graduated from law school when?

10 A. 1989.

11 Q. What did you do between undergraduate and law
12 school?

13 A. Well, I worked in a number of jobs. I also had a
14 health crisis that occurred during that time
15 period.

16 MR. FARR: You don't need to tell him any
17 more than that.

18 THE WITNESS: Thank you.

19 BY MR. SPEAS:

20 Q. After you graduated in 1989 from the law school,
21 did you take the bar exam?

22 A. I did.

23 Q. Are you licensed to practice law in South Carolina?

24 A. I am.

25 Q. Are you licensed to practice law in any other

1 state?

2 A. No.

3 Q. Tell me about your first employment after you

4 graduated from law school.

5 A. I became associate counsel to the Republican

6 National Committee in Washington, DC.

7 Q. And what were your duties there?

8 A. My principal duties at that time were

9 redistricting.

10 Q. And how long did you remain in that post?

11 A. Until 1993.

12 Q. And did you work with Thomas Brooks Hofeller during

13 that period?

14 A. I did.

15 Q. Did you work with John Morgan during that period?

16 A. I worked with John Morgan's father during that

17 period. I can't really say whether I worked with

18 John Morgan junior or not.

19 Q. And I assume you did not work with Joel Raupe

20 during that period.

21 A. No.

22 Q. After you -- after '93, what did you do next?

23 A. I returned to South Carolina, engaged in the

24 practice of law.

25 My principal areas of practice in fact

1 these days pretty much exclusively are election
2 law.

3 Q. And did you practice with a firm or by yourself?

4 A. Principally by myself. I also was the coordinating
5 attorney for the Southeastern Legal Foundation in
6 South Carolina during that period.

7 Q. And what is the Southeastern Legal Foundation?

8 A. It is a legal foundation that engages in various
9 public interest lawsuits.

10 Q. Are you still associated with that organization?

11 A. I am not. I ended that association in 1998 -- and
12 I'll go ahead and save you the next question.

13 Q. Please.

14 A. -- when I became the counsel to the Congressionally
15 appointed members of the Census Monitoring Board.

16 Q. And that was in 1998?

17 A. Correct.

18 Q. What were your duties there?

19 A. My duties there were to advise the members of the
20 board and to assist them in their oversight duties
21 regarding the upcoming 2000 Census.

22 Q. Was that a full-time employment?

23 A. Yes, it was.

24 Q. And who employed you in that position?

25 A. Well, the executive director was Fred Asbell. I'm

1 actually drawing a blank on the chairman at the
2 moment. Former treasurer of the State of Ohio. I
3 can't believe I can't remember his name.

4 Q. And you remained there for how long?

5 A. Remained there until near the end of 1999.

6 Q. Did you give up your South Carolina practice in
7 '98?

8 A. I did.

9 Q. But you remained a member of the South Carolina
10 bar?

11 A. I did.

12 Q. In 1999 what did you do?

13 A. 1999 I left the Census -- it was at the end of '99
14 I left the Census Monitoring Board and became the
15 redistricting counsel to the Republican National
16 Committee.

17 Q. Now, at the monitoring board did you work with
18 Thomas Brooks Hofeller?

19 A. I did occasionally work with Tom Hofeller because
20 Hofeller was at that time the staff director for
21 the Census Subcommittee of the United States House,
22 so while we didn't work for the exact same agency,
23 we were in many ways engaged in the same task
24 except we were -- we were actually in the Census
25 Bureau monitoring what was going on, how the Census

1 was actually being conducted. He was working for
2 the congressman.

3 Q. Did you work with John Morgan junior during that
4 setting?

5 A. I probably knew John Morgan, but I don't think he
6 was doing anything in regards to the Census issues
7 that we were dealing with.

8 Q. Did you work with Joel Raupe during that period?

9 A. No. Joel wouldn't have had anything to do with
10 that.

11 Q. You became redistricting counsel to the RNC, then,
12 in 1999, did you say?

13 A. Yeah, at the end of '99.

14 Q. Was that a full-time position?

15 A. It was.

16 Q. How long did you remain in that position?

17 A. Until 2004.

18 Q. And to whom did you report in your role as
19 redistricting counsel?

20 A. To the chief counsel of the RNC.

21 Q. Who was that?

22 A. At the beginning it was Michael Toner. Then it
23 became Tom Josefiak.

24 Q. Did you work with Tom Hofeller?

25 A. I did.

1 Q. And what was Tom Hofeller's role at that point
2 between '09 and '04 -- I mean '99 and '04?

3 A. Tom Hofeller, I believe his title was redistricting
4 coordinator. He was essentially the chief
5 demographer.

6 Q. In '04 where did you go?

7 A. In '04 I returned home again.

8 Q. Pursuing election law?

9 A. Pursuing election law.

10 Q. Sole practitioner or with a firm?

11 A. Sole practitioner, although I associated with a
12 number of other firms and groups that I did work
13 through.

14 Q. And how long did you remain in that position?

15 A. Until 2008.

16 Q. What happened in '08?

17 A. In '08 someone who I used to do a great deal of
18 work with, Don McGann, was appointed chairman of
19 the Federal Election Commission, and he asked me to
20 be his counsel and chief of staff.

21 Q. And how long did you serve in that capacity?

22 A. I served in that capacity until 2010, I think
23 that's right.

24 Q. And in 2010 you did what?

25 A. I left to begin pursuing opportunities in

1 redistricting once more because I knew there were
2 going to be a number of cases and, well, that only
3 comes up once every ten years.

4 Q. And by what vehicle did you pursue these
5 redistricting opportunities?

6 A. Well, principally through two. I am again in
7 private practice. I also am of counsel to the firm
8 Beirne Maynard & Parsons in Austin, Texas.

9 Q. Would you give me that again.

10 A. Beirne Maynard & Parsons.

11 Q. Okay.

12 A. I'm also in sole practice and I have a number of
13 clients, including which since there is an FEC
14 report to this effect, I will reveal this client
15 but it's the only client I am going to reveal.

16 Q. And who is that?

17 A. That's the Republican National Committee.

18 Q. How long has the Republican National Committee been
19 your client?

20 A. This time around?

21 Q. This time around.

22 A. This time around --

23 Q. Since --

24 A. Since 2010.

25 Q. Since 2010 until today one of your clients is the

1 RNC?

2 A. One of my clients is the RNC.

3 Q. And that's the only client you're going to tell me

4 about?

5 A. That's the only client I am going to tell you

6 about.

7 Q. You are of counsel with a Texas law firm that's

8 located in Austin?

9 A. Yes, it is. Its principal office is in Houston,

10 but I generally work out of the Austin office.

11 Q. Are you licensed in Texas?

12 A. I am not.

13 Q. Have you sought to be licensed in Texas?

14 A. I have not.

15 Q. Let's explore your North Carolina work.

16 A. Okay.

17 Q. And let's start in the '90s.

18 A. Okay.

19 Q. Were you involved in any way in the redistricting

20 in North Carolina in the 1990s?

21 A. Yes.

22 Q. What was your role?

23 A. My role was to assist a number of the local

24 counsel, principally at that time Bob Hunter and

25 Marshall Hurley, who were engaging in a number of

1 pieces of litigation at that time, drafting plans,
2 et cetera, in particular during pre-clearance
3 process where a number of plans were drafted and we
4 produced comment letters that went to the
5 Department of Justice.

6 Q. And you worked with Mr. Hunter and Mr. Hurley in
7 your role as counsel to the redistricting counsel
8 or associate redistricting counsel to the RNC?

9 A. Correct.

10 Q. And your focus was on Congressional or legislative
11 or both?

12 A. Everything.

13 Q. Were you involved in the Congressional
14 redistricting legislation in the 1990s?

15 A. Litigation in the 1990s.

16 Q. The Congressional in North Carolina.

17 A. You said legislation. I think you meant
18 litigation.

19 Q. I'm sorry. I did mean litigation.

20 A. Sorry to correct you, but I thought I understood
21 what you wanted but I wasn't sure from the way you
22 actually asked that.

23 Q. I need correcting on a regular basis.

24 A. Okay. To some extent I was. I was not involved in
25 the early iterations of the Shaw case. I was in

1 fact involved in the last round of the -- I almost
2 said it -- Cromartie litigation.

3 Q. And what was that role?

4 A. That role was after it had come back to the
5 district court. Again, I was assisting Mr. Hunter
6 and Mr. Hurley.

7 Q. What role, if any, did you play in redistricting in
8 North Carolina in the 2000 cycle?

9 A. I was again working extensively in North Carolina
10 during the Stephenson litigation and in much the
11 same manner.

12 Q. And did you work with Mr. Farr?

13 A. I did.

14 Q. With whom -- who else did you work with?

15 A. I worked with Mr. Hunter and Jeff Davis.

16 Q. And you worked with them in your role as
17 redistricting counsel for the RNC?

18 A. True. However, I have -- I've been associated in a
19 number of cases in North Carolina when I wasn't
20 working with North Carolina -- working with the
21 RNC. I was typically associated by the lawyers
22 that would operate in North Carolina during that
23 period.

24 Q. Did you appear as counsel of record in the
25 Stephenson litigation?

1 A. I did not.

2 Q. Did you have a North Carolina client in the
3 redistricting litigation?

4 A. In the Stephenson litigation?

5 Q. Yes.

6 A. Well, yes, I would assume the plaintiffs.

7 Q. Were you retained by the plaintiffs in the
8 Stephenson litigation?

9 A. Well, I was retained by the local counsel. I was
10 associated by the local counsel, yes.

11 Q. Were you working in that case as redistricting
12 counsel for the RNC or as local counsel for the
13 lawyers that -- who had retained you?

14 A. It depended on which time period you're talking
15 about in the Stephenson case.

16 Q. Well, let's see if we can straighten that out just
17 a little bit.

18 At some point you were working entirely as
19 redistricting counsel for the RNC, correct?

20 A. Uh-huh.

21 Q. And at some point you became -- you were retained,
22 I take it, by one or more of the law firms.

23 A. Uh-huh.

24 Q. At what point were you retained?

25 A. That would have been sometime -- I'm glad that

1 happened to you. Hold on for a second.

2 (Brief Interruption.)

3 THE WITNESS: You know, I don't exactly
4 know, but it's toward the back end of the
5 litigation.

6 BY MR. SPEAS:

7 Q. In the Stephenson matter, did you work with
8 Mr. Joel Raupe?

9 A. I think that's probably when I first met Joel
10 Raupe.

11 Q. And in working with Joel Raupe, did you focus on
12 clustering issues?

13 A. You mean grouping of counties?

14 Q. Grouping, pods, clusters, let's decide now what
15 we're going to call them.

16 A. Well, the court itself calls them groupings.

17 MR. FARR: Everyone else calls them
18 clusters and pods.

19 MR. SPEAS: I will --

20 THE WITNESS: I have bowed to the
21 pronunciation of Cromartie as Cromartie. I will
22 bow to groupings.

23 BY MR. SPEAS:

24 Q. Well, I have not bowed to the pronunciation, but I
25 will stick with groupings.

1 Did you work with Mr. Raupe on the issue of
2 groupings?

3 A. I certainly talked with Mr. Raupe about groupings.
4 And honestly, I can't remember how much Mr. Raupe
5 was actually doing with groupings at that time.

6 (WHEREUPON, Exhibit 315, previously
7 marked, was re-marked for identification.)

8 BY MR. SPEAS:

9 Q. There has previously been introduced in this matter
10 a draft affidavit of Joel Raupe which was marked as
11 Exhibit 315, by my numbering.

12 And let me hand you that and I will ask you
13 if you recall working with Mr. Raupe in the
14 preparation of that affidavit.

15 A. You'll have to excuse me. The type on this is kind
16 of small.

17 Q. For the record, Mr. Oldham, as you review that, you
18 will see some marks. I think those are mine, just
19 for the record.

20 MR. FARR: You trained Alec well.

21 MR. SPEAS: I did and wait until we get to
22 the next document.

23 MR. FARR: I can hardly wait.

24 Can I go off the record for a second.

25 (Discussion held off the record.)

1 THE WITNESS: Was this actually signed by
2 Mr. Raupe?

3 BY MR. SPEAS:

4 Q. No. We identified it in his deposition.

5 Do you recognize it as a document you
6 assisted Mr. Raupe in preparing?

7 A. No, I don't. I'm not even sure this was actually
8 filed.

9 Q. Let me show you another document that was marked as
10 an exhibit to the John Morgan deposition,
11 Exhibit 392, I believe.

12 Let me say in advance that the copy that I
13 am showing you is a copy with my notes on it. It
14 is in fact labeled my copy. I could not find
15 another copy.

16 MR. FARR: We appreciate you giving us
17 your copy, Eddie, thank you.

18 MR. SPEAS: I do not propose to mark that
19 as an exhibit, but I would ask you if you would
20 examine the document.

21 MR. FARR: What number is that?

22 MR. SPEAS: Marked 392 to the deposition
23 of John Morgan, and I would tell you that that is a
24 document that Mr. Morgan --

25 THE WITNESS: Well, thank God this is in

1 12 point.

2 BY MR. SPEAS:

3 Q. If you would take a minute to review that, and my
4 question is whether you reviewed with Mr. Morgan in
5 drafting that affidavit. And it's more lengthy
6 than the other one.

7 A. (Witness complying.)

8 I apologize for the amount of time.

9 Q. It's a long affidavit.

10 Finished?

11 A. Yes.

12 Is this signed?

13 Q. The exhibit was not signed, no. The question is
14 whether --

15 A. So this wasn't filed as an affidavit?

16 Q. It was identified by Mr. Morgan as a document that
17 he drafted, and my question is whether you
18 participated with him in drafting that document to
19 your memory.

20 A. I don't recall the document. I can't remember
21 whether we filed an affidavit on behalf of
22 Mr. Morgan or not during that case.

23 If you have the signed affidavit, I would
24 be happy to look at it.

25 Q. Do you recall any conversations with Mr. Morgan

1 about the concept of clustering under the
2 Stephenson decision?

3 A. I had conversations with Mr. Morgan about
4 groupings. I can't recall specifically what I may
5 have said to Mr. Morgan at that time.

6 Q. As you read that document this morning, do you
7 recall -- well, let me rephrase that.

8 As you read the document this morning, do
9 you see anything inconsistent in that document with
10 respect to your views about grouping?

11 A. That may be, but that's going to get into the area
12 of legal advice, and I don't feel comfortable going
13 there at this time.

14 Q. Okay. Let's talk a little bit about 2010
15 redistricting.

16 A. Sure.

17 Q. Were you involved in redistricting in
18 North Carolina in the 2010 cycle?

19 A. Yes.

20 Q. And when did you first become involved?

21 A. That depends on what you mean by being involved.

22 Q. Okay. When -- in 2010 you were serving as
23 redistricting counsel for the Republican National
24 Committee, correct?

25 A. Correct.

1 Q. In your role as redistricting counsel to the
2 Republican National Committee, do you recall when
3 you first became involved in redistricting in
4 North Carolina?

5 A. I can't give you an exact date, but we held a
6 number of education sessions that were -- I can't
7 tell you specifically who or if they were attended
8 by, but I feel fairly comfortable North Carolinians
9 attended.

10 Q. These were seminars put on nationally by the RNC,
11 correct?

12 A. Correct. And I consider the advice that we give at
13 those seminars to be privileged.

14 Q. Let me ask you this: At any point were you paid by
15 anybody other than the RNC for your work in
16 North Carolina whatever it might have been?

17 MR. FARR: Objection. We'll stipulate he
18 wasn't paid by state funds and otherwise we believe
19 it's privileged.

20 BY MR. SPEAS:

21 Q. So your testimony, Mr. Oldham, is that you worked
22 in North Carolina and you were paid as a lawyer for
23 your work in North Carolina but you were not paid
24 with state funds?

25 MR. FARR: Objection. We're going to

1 stick to what I said. He was not paid by state
2 funds and otherwise I instruct him not to answer
3 the question.

4 BY MR. SPEAS:

5 Q. What role did you play in North Carolina?

6 A. Well, Mr. Farr called me in and associated me in
7 this matter to assist him in representing the
8 clients here. After that, I have provided advice
9 which, again, I believe we are invoking privilege
10 on so therefore I can't really discuss that.

11 Q. When were you associated, what date?

12 A. I don't know the exact date. We can figure that
13 out, I think.

14 Q. Can you give me an approximate date?

15 A. Sometime early in 2011.

16 Q. And is that relationship described in a written
17 document?

18 A. No.

19 Q. And what were the terms under which you were
20 associated?

21 MR. FARR: Objection.

22 MR. SPEAS: Instruct him not to answer?

23 MR. FARR: Yes, I do, the same reasons as
24 I've already stated.

25 BY MR. SPEAS:

1 Q. So one of the roles you played in North Carolina
2 was providing legal advice?

3 A. Correct.

4 Q. To whom did you provide legal advice?

5 A. Principally to Senator Rucho and Senator Lewis
6 (sic) and their agents.

7 Q. Did you provide that advice by e-mail?

8 A. I never provide advice by e-mail.

9 Q. And did you provide that advice by memo or other --

10 A. Probably not.

11 Q. Did you provide that advice in face-to-face
12 meetings?

13 A. Yes.

14 Q. Who was present in those meetings?

15 A. I can't recall from all of those meetings.

16 Q. Were persons other than legislators in those
17 meetings?

18 A. Sometimes.

19 Q. And were those other persons legislators?

20 A. Sometimes, sometimes not.

21 Q. Were those other persons legislative staff members?

22 A. May have been.

23 Q. Do you recall who those legislative staff members
24 might have been?

25 A. This assumes that I know that they're legislative

1 staff members.

2 Q. Okay. Best you recall.

3 A. Well, obviously, Hofeller was there, Morgan was

4 there, Raupe at times but not that often, Michael

5 Luethy.

6 Q. Brent Woodcox?

7 A. Yes, I believe.

8 Q. Jim Blaine?

9 A. From time to time.

10 That's easier if you tell me.

11 Q. Jason Kay?

12 A. Jason was there from time to time. Not that often.

13 Q. Now, you were working with Mr. Hofeller. What was

14 Mr. Hofeller's role or Dr. Hofeller's role in

15 North Carolina?

16 A. Dr. Hofeller was the principal map drawer.

17 Q. Did Mr. Morgan draw maps?

18 A. He did.

19 Q. Did Mr. Raupe draw maps?

20 A. I'm certain he drew versions of maps, yes.

21 Q. Did anybody else draw maps to your knowledge?

22 A. I don't think anybody else was drawing on the

23 Maptitude system.

24 Q. And you drew some maps?

25 A. I drew -- well, the principal things that I did, I

1 would look at certain maps that had been drawn by
2 others and try to examine them as to whether I
3 thought they were compliant.

4 This is really kind of in a legal advice
5 capacity so I don't think we're going to talk about
6 that.

7 There were -- there was one thing that I
8 looked at that did make it into the final map
9 because I became concerned about Larios compliance
10 in a number of metro areas. It turns out it wasn't
11 as big a concern in some as it was in others. And
12 made some adjustments to Greensboro which
13 Dr. Hofeller then later adjusted again as he is
14 want to do.

15 The principal thing that I did in terms of
16 what would be considered drawings maps was the
17 physical drawing in the sense that I think you're
18 thinking of, but it was in terms of doing analysis
19 on the county groupings.

20 Q. And we'll get to that in a few minutes.

21 I'm going to ask the court reporter to mark
22 a document as 393.

23 (WHEREUPON, Exhibit 393 was marked for
24 identification.)

25 BY MR. SPEAS:

1 Q. Mr. Oldham, I've handed you a document that I
2 obtained from the website of the Republican State
3 Leadership Committee marked as Exhibit 393 and ask
4 you if you can identify that as a letter that was
5 sent to Dear Friends on August 15, 2011, by
6 Mr. Jankowski, president of the Republican State
7 Leadership Committee?

8 A. Well, it appears to be from Mr. Jankowski.

9 Q. And he was your supervisor?

10 A. Well, he's a client. Well, the RSLC was a client.

11 Q. He's the president of your client?

12 A. Right. The letter was not passed through me.

13 Q. In this letter Mr. Jankowski states in the first
14 beginning paragraph on page 2 in the second
15 sentence, and I quote, "We have retained the
16 veteran team of seasoned redistricting experts,
17 including Tom Hofeller, Dale Oldham, Mike Wild and
18 others who collectively have over a century's worth
19 of redistricting experience."

20 And then in the next paragraph it says,
21 "The team has been crisscrossing the county" -- I
22 think it means country -- "and already has
23 delivered solid results in a number of states, most
24 recently in North Carolina."

25 Are those sentences accurate from your

1 perspective?

2 MR. FARR: Objection.

3 You may answer the question if you want.

4 THE WITNESS: Since I haven't seen the
5 document or talked to my client about this, I think
6 I better refrain from commenting on it at this
7 time.

8 BY MR. SPEAS:

9 Q. Have you ever seen that before?

10 A. No, I haven't.

11 Q. Let me ask you this: To the extent you drew maps,
12 where did you draw those maps? Were you here in
13 North Carolina or were you in South Carolina?

14 A. Actually, I was here. If we're discussing what I
15 just stated a moment ago.

16 Q. My question is to the extent you were drawing maps.

17 A. Okay. Are we discussing what I was discussing a
18 minute ago in terms of drawing maps or are you
19 referring to a broader context in terms of
20 doing -- working on groupings?

21 Q. I am referring to the broader context. To the
22 extent you were using Maptitude to draw maps, did
23 you draw those maps here in North Carolina?

24 A. The maps that I drew on Maptitude I drew here.
25 That we just discussed.

1 In terms of actually doing groupings, that
2 would have been here and elsewhere.

3 Q. And is elsewhere South Carolina?

4 A. Could be. Could also have been a variety of other
5 places.

6 Q. Including the RNC in DC?

7 A. Could have been DC. It could have been other
8 places that I was currently working in.

9 Q. Including Texas?

10 A. Including Texas.

11 Q. Now, the Maptitude, the computer and the software,
12 was located at the Republican headquarters on
13 Hillsborough Street?

14 A. Oh, you're talking -- yes, there was a machine that
15 was located in the State Republican headquarters
16 here, yes.

17 Q. Now, let me ask you this -- and, Mr. Farr, pay
18 attention.

19 MR. FARR: Okay. Thank you.

20 BY MR. SPEAS:

21 Q. Did you meet with Senator Rucho at various points
22 in this redistricting process?

23 A. Yes.

24 Q. And where did you meet with him?

25 A. Variety of places.

1 Q. Did you meet with him in the legislative building?

2 A. I certainly saw him in the legislative building,
3 yes.

4 Q. Did you meet with him at Republican headquarters on
5 Hillsborough Street?

6 A. Yes, definitely.

7 Q. And in any -- do you recall the first time you met
8 with Senator Rucho?

9 A. Not necessarily, no.

10 Q. Did you meet with Senator Rucho on a weekly basis?

11 A. Depended on how many times he came in and what was
12 going on at the time. I mean, sometimes we met
13 every day. Sometimes we didn't meet for weeks.

14 Q. Did you provide Senator Rucho with advice regarding
15 the legal standards necessary to establish the
16 existence of racially polarized voting?

17 MR. FARR: Objection.

18 Instruct you not to answer that question.

19 BY MR. SPEAS:

20 Q. Did you meet with Senator Rucho to discuss the
21 results of North Carolina elections in which
22 African Americans were candidates?

23 MR. FARR: Objection; same reason.

24 MR. SPEAS: Are you instructing him not to
25 answer?

1 MR. FARR: I am.

2 BY MR. SPEAS:

3 Q. Did you meet with Senator Rucho to discuss with him
4 the question of proportionality?

5 MR. FARR: Objection.

6 Instruct you not to answer.

7 BY MR. SPEAS:

8 Q. Did you meet with Senator Rucho to discuss with him
9 the racial percentage that should be included in
10 VRA districts?

11 MR. FARR: Objection.

12 BY MR. SPEAS:

13 Q. Did you meet with Senator Rucho to discuss the
14 question of compactness?

15 MR. FARR: Objection.

16 BY MR. SPEAS:

17 Q. Did you meet with Senator Rucho to discuss the
18 question of communities of interest?

19 MR. FARR: Objection.

20 BY MR. SPEAS:

21 Q. Did you meet with Senator Rucho to discuss the
22 requirements of the Whole County Provision of the
23 North Carolina Constitution?

24 MR. FARR: Objection.

25 BY MR. SPEAS:

1 Q. Did you meet with Senator Rucho to discuss
2 whether -- to discuss the concept of split
3 counties?

4 MR. FARR: Objection.

5 BY MR. SPEAS:

6 Q. Did you meet with Senator Rucho to discuss the
7 concept of county line traverses?

8 MR. FARR: Objection.

9 BY MR. SPEAS:

10 Q. Did you meet with Senator Berger?

11 A. I certainly met Senator Berger, yes.

12 Q. Did you meet with Senator Berger to provide him
13 legal advice?

14 MR. FARR: Objection on the ground of
15 attorney-client privilege and on the ground of
16 legislative privilege.

17 MR. SPEAS: So you're instructing him not
18 to answer the question whether he met with Senator
19 Berger?

20 MR. FARR: He told you he met with him.
21 He's not going to say what he talked with him
22 about.

23 BY MR. SPEAS:

24 Q. How often did you meet with Senator Berger?

25 A. A lot less than Senator Rucho.

1 Q. Did you meet with Representative David Lewis?

2 A. Yes.

3 Q. And did you meet with him in the legislative
4 building?

5 A. I certainly saw him in the legislative building,
6 yes.

7 Q. Where did most of your meetings with Representative
8 Lewis take place?

9 A. Probably over at State Party headquarters, but they
10 took place at a number of other places as well.

11 Q. Where else?

12 A. Mr. Farr's office, various restaurants around town,
13 some of which I can identify and some of which I
14 can't.

15 Q. Some of which you prefer not to identify.

16 A. Right.

17 Q. Did you communicate with Representative Lewis by
18 e-mail?

19 A. I doubt it.

20 Q. Did you communicate with Representative Lewis in
21 writing to your memory?

22 A. Not to my memory, no.

23 Q. And your client -- your lawyer, Mr. Farr, will
24 instruct you not to answer any questions that I ask
25 you regarding the topics you talked with

1 Representative Lewis about.

2 Am I correct, Mr. Farr?

3 MR. FARR: Only to the extent they involve
4 legal advice.

5 BY MR. SPEAS:

6 Q. Did you provide Representative Lewis any advice
7 about racially polarized voting?

8 MR. FARR: Objection.

9 BY MR. SPEAS:

10 Q. Election results?

11 MR. FARR: Objection.

12 BY MR. SPEAS:

13 Q. Number of VRA districts?

14 MR. FARR: Objection.

15 BY MR. SPEAS:

16 Q. Racial percentage of VRA districts?

17 MR. FARR: Objection.

18 BY MR. SPEAS:

19 Q. Compactness?

20 MR. FARR: Objection.

21 BY MR. SPEAS:

22 Q. Communities of interest?

23 MR. FARR: Objection.

24 BY MR. SPEAS:

25 Q. The Whole County Provision?

1 MR. FARR: Objection.

2 BY MR. SPEAS:

3 Q. Did you meet with Speaker Tillis?

4 A. I did.

5 Q. And how often did you meet with Representative
6 Tillis?

7 A. Again, as with Senator Berger and Senator Rucho,
8 not nearly as often as I met with Representative
9 Lewis.

10 Q. The legislature had a series of public hearings.
11 Did you attend those public hearings?

12 A. I did not.

13 Q. Did you meet with any member of the North Carolina
14 legislature other than Senators Rucho and Berger or
15 Representatives Lewis and Tillis?

16 A. Yes.

17 Q. Who?

18 A. I'm only going to give you the ones I can recall
19 because I know I met more than who I am going to be
20 able to mention but I don't know their names that
21 well and some of them only kind of briefly
22 identified themselves and I forgot it soon
23 thereafter.

24 Representative Dockham, Representative
25 Dollar, Majority Leader Stam.

1 There are a number of other people, but I
2 don't actually feel certain enough to name them by
3 name.

4 Q. On the Senate side anybody?

5 A. There were a few, but kind of the same situation.

6 Q. There has been testimony in this case I believe
7 from Mr. Raupe that on one occasion Mr. Hofeller
8 met with some members of the North Carolina General
9 Assembly at a hotel on Hillsborough Street to
10 review a draft plan of their particular districts.

11 Were you involved in any such meetings?

12 A. I did attend some of those meetings. That's --
13 like I say, I can't remember everybody's names.

14 Q. Was the purpose of those meetings to show these
15 particular individuals their proposed district or
16 the districts within the group of counties in which
17 their district was located?

18 MR. FARR: You can answer that question.

19 THE WITNESS: More closely the latter.

20 BY MR. SPEAS:

21 Q. Let me ask you this: Let me show you a document
22 which we will mark as Exhibit 394.

23 (WHEREUPON, Exhibit 394 was marked for
24 identification.)

25 THE WITNESS: This I recognize.

1 BY MR. SPEAS:

2 Q. I thought you might.

3 Do you recognize that document?

4 A. Oh, yeah.

5 Q. Can you tell me what it is?

6 A. This is one of Dr. Hofeller's PowerPoint shows.

7 Q. And was this delivered at an RNC conference in
8 Washington, DC?

9 A. I can't tell you whether -- because he has at least
10 a couple dozen of these things that have -- they're
11 the same basic show but he flips them around,
12 changes them a little bit, so I can't tell you if
13 this is the specifically the one he did at that
14 point.

15 Q. Well, if you look at the bottom of the first page,
16 it's labeled 2010 GOP Redistricting Conference.

17 A. Well, that would probably be indicative, but I
18 can't tell you that this is the one, but he's been
19 delivering What I Learned About Redistricting the
20 Hard Way ever since he discovered that there was
21 this thing called PowerPoint.

22 Q. Were you in attendance at this meeting?

23 A. Yes, I think I was. I don't know that I was in
24 attendance when he did this.

25 Q. And I want to explore with you some of the advice

1 that Mr. Hofeller gave. If you would turn with me
2 first to the second page to the bottom slide,
3 "Special Information you need before line-drawing
4 begins: Try to find out what each legislator's
5 objectives are - Only they can enact the plan."

6 Did that occur in North Carolina, to your
7 knowledge?

8 MR. FARR: Objection.

9 If that requires you to disclose privileged
10 information --

11 THE WITNESS: I can't answer that.

12 BY MR. SPEAS:

13 Q. Did you meet with any legislator to find out what
14 his or her objectives were with regard to a plan?

15 MR. FARR: Objection.

16 THE WITNESS: I can't answer that.

17 BY MR. SPEAS:

18 Q. Do you know whether Mr. Hofeller met with
19 legislators to find out what their objectives are
20 with respect to the plan?

21 A. I'm not sure.

22 Q. On the next page, the third page, under the topic
23 Getting to Know the State, Mr. Hofeller says,
24 "Create a district outline map of the districts,
25 and study the deviation of each district in

1 relation to its neighbors."

2 Do you know whether that occurred in
3 North Carolina?

4 MR. FARR: Objection.

5 MR. SPEAS: Instructing him not to answer?

6 MR. FARR: Yes. It's attorney-client
7 privileged. It's also covered by the Work Product
8 Doctrine, and Mr. Hofeller will be able to answer
9 questions about what he did in drawing maps.

10 BY MR. SPEAS:

11 Q. Looking at the next slide, Mr. Oldham, under
12 Getting to Know the State, there is the entry "Draw
13 a 'Good Government' plan. Just to see what effect
14 it would have."

15 To your knowledge, was a good government
16 plan drawn in North Carolina?

17 MR. FARR: Objection.

18 MR. SPEAS: Instruct him not to answer?

19 MR. FARR: Yes, I do.

20 BY MR. SPEAS:

21 Q. And the next slide on that page, "Decide what types
22 of plans you may wish to put out in public to make
23 specific points."

24 Did that happen in North Carolina?

25 MR. FARR: What page is that, please?

1 MR. SPEAS: Same page.

2 THE WITNESS: Right down here at the

3 bottom.

4 MR. FARR: Objection; instruct him not to

5 answer.

6 BY MR. SPEAS:

7 Q. On the next page, I guess the fourth page, under

8 the label Computer Perils is the entry, quote,

9 "Make sure your computer is in a PRIVATE location."

10 Did that occur in North Carolina?

11 MR. FARR: Objection.

12 MR. SPEAS: Instruct him not to answer?

13 MR. FARR: Yes.

14 BY MR. SPEAS:

15 Q. On the next page, I know you won't answer those.

16 Let's go to the next page.

17 MR. FARR: So we're on to the page that

18 says Legal Perils?

19 MR. SPEAS: Yes, Legal Perils.

20 MR. FARR: I'm thinking there's going to

21 be some not answered on this page.

22 BY MR. SPEAS:

23 Q. The second slide contains the entry, quote, "Don't

24 get caught in 'criteria hell.'"

25 Do you know what Dr. Hofeller meant by that

1 direction, "don't get caught in criteria hell"?

2 MR. FARR: You can answer that question if
3 you know the answer.

4 THE WITNESS: Dr. Hofeller wrote it. I
5 think I'll let Dr. Hofeller explain.

6 BY MR. SPEAS:

7 Q. On the slide just immediately above that is the
8 entry, quote, "E-mails are the tool of the devil.
9 Use personal contact or a safe phone."

10 Do you know whether that occurred in
11 North Carolina?

12 MR. FARR: Objection.

13 BY MR. SPEAS:

14 Q. On the next page under -- on the slide that is
15 entitled When Actually Drawing Plans is the entry,
16 quote, "Don't start until you have a general idea
17 of your objectives and how the plan will be put
18 together."

19 Did that happen in North Carolina?

20 MR. FARR: Objection.

21 BY MR. SPEAS:

22 Q. On the bottom slide on that page is the entry,
23 quote, "Don't get 'cute.' Remember this IS
24 legislation."

25 Was that followed in North Carolina?

1 MR. FARR: Objection.

2 BY MR. SPEAS:

3 Q. On that same slide is the entry, quote, "Don't
4 create stupid irregularities in boundaries, make
5 the plan as 'neat' as possible within the scope of
6 your objectives."

7 Did that happen in North Carolina?

8 MR. FARR: Objection.

9 BY MR. SPEAS:

10 Q. And then on the last page under Political
11 Admonitions -- I take it that is not a legal
12 admonition -- is this entry: "Don't be afraid to
13 dazzle them with science, but don't confuse them -
14 unless that's intended."

15 Did that happen in North Carolina?

16 MR. FARR: Objection. And I just want to
17 make it clear the objections that I am registering
18 may be attorney-client privilege, they may be work
19 product, they may be legislative privilege, and
20 they're all calling for legal conclusions which I
21 am not going to let my co-counsel make in this
22 deposition.

23 BY MR. SPEAS:

24 Q. And do you know what Dr. Hofeller meant by the
25 phrase "Don't be afraid to dazzle them with

1 science, but don't confuse them - unless that's
2 intended"?

3 MR. FARR: You may answer that question.

4 THE WITNESS: No. I'm reminded of a
5 certain rock song of the '80s, but no.

6 BY MR. SPEAS:

7 Q. And to your memory, Senator Rucho was present at
8 this conference, 2010 GOP Redistricting Conference;
9 is that correct?

10 A. I believe he was.

11 Q. And Representative Lewis was there?

12 A. Maybe, yes.

13 MR. FARR: Can we take another break?

14 MR. SPEAS: Sure.

15 (Brief Recess: 10:51 to 10:59 a.m.)

16 BY MR. SPEAS:

17 Q. Couple of follow-up questions.

18 Did you attend any meeting of the House
19 Redistricting Committee?

20 A. You're talking about the North Carolina House
21 Redistricting Committee?

22 Q. Yes, this time.

23 A. Yes, I believe I did.

24 Q. Did you attend any meeting of the Senate
25 Redistricting Committee this time?

1 A. Yes, I believe I did.

2 Q. Are you registered as a lobbyist in North Carolina?

3 A. I am not.

4 Q. Now, let me ask you this: In your meeting with
5 Senator Rucho, did he ever give you any
6 instructions as to the plans that he wanted drawn?

7 MR. FARR: Objection.

8 MR. SPEAS: And is that privileged?

9 MR. FARR: Because he's having a
10 conversation with his clients, yes, that's
11 attorney-client privilege.

12 MR. SPEAS: Just so the record is clear,
13 if I ask you any questions with respect to what
14 either Senator Rucho or Representative Lewis or
15 Senator Berger or Speaker Tillis told you they
16 wanted with respect to the plans, Mr. Farr, you
17 will instruct him not to answer?

18 MR. FARR: Yes.

19 MR. SPEAS: Let's mark this as
20 Exhibit -- I've got a series of maps I want to ask
21 the witness about and I have a big map in color. I
22 also have copies for y'all in black and white and
23 smaller, so we will mark the larger one as the
24 exhibit.

25 MR. FARR: That's fine.

1 (WHEREUPON, Exhibit 395 was marked for
2 identification.)

3 BY MR. SPEAS:

4 Q. Mr. Oldham, I have put in front of you a map that
5 is labeled NC Without Odd Minority Districts.

6 Do you recognize that map?

7 A. Not right offhand, no.

8 Q. To your best memory as you sit here, is that a map
9 you drew?

10 A. No.

11 Q. Is that a map Mr. Hofeller drew?

12 A. I couldn't know for sure on that.

13 Q. Is it -- do you believe it's a map Mr. Hofeller
14 drew?

15 MR. FARR: Objection.

16 You can say if you know that he did or he
17 didn't.

18 THE WITNESS: I don't know.

19 BY MR. SPEAS:

20 Q. Is it a map that Mr. Morgan drew?

21 A. Again, I wouldn't know.

22 Q. Is it a map Mr. Raupe drew?

23 A. Again, I wouldn't know.

24 Q. Okay. Let's mark this as --

25 MR. FARR: Can we ask you a question?

1 MR. SPEAS: Sure.

2 MR. FARR: Do you know what disc that came
3 from?

4 MR. SPEAS: It came from Hofeller's disks.
5 (WHEREUPON, Exhibit 396 was marked for
6 identification.)

7 BY MR. SPEAS:

8 Q. Mr. Oldham, 396 is in front of you. It is a map
9 entitled NC House Less Convolutated.

10 Do you recognize that as a map drawn by the
11 map drawers in North Carolina in the 2010
12 redistricting cycle?

13 A. Certainly may have been, but I can't examine it --
14 I can't identify it without some additional
15 information, no.

16 Q. What additional information would you need to
17 identify it?

18 A. Well, I mean, you could tell me this was produced
19 by someone and I would probably believe it, but I
20 don't know -- can I think of this specific map, no.

21 Q. And to your memory, you did not participate in
22 actually drawing that map?

23 A. No, this is not a map I would have drawn.

24 Q. Let's mark this as Exhibit 397. This is a document
25 that was produced during discovery.

1 (WHEREUPON, Exhibit 397 was marked for
2 identification.)

3 BY MR. SPEAS:

4 Q. Do you recognize Exhibit 397 as an e-mail
5 communication from Tom Farr to Tom Hofeller and you
6 dated May 17, 2011?

7 A. That is what it appears to be, yes.

8 Q. Do you recall receiving this?

9 A. Not really, but I -- you know, I suspect I probably
10 did.

11 Q. And is your e-mail address -- your private e-mail
12 address dloesq@aol.com?

13 A. It is.

14 Q. And do you also have an e-mail address at RNC?

15 A. I do. And it appears it went to one of them. As
16 some people have learned, e-mail is not the best
17 way to contact me.

18 Q. And does this e-mail concern a schedule for the
19 adoption of plans?

20 A. It appears to, yes.

21 Q. And the e-mail communicates that on June 8, the
22 joint committee -- quote, a joint committee hearing
23 at which -- well, this is -- do you understand this
24 e-mail to state that a joint committee hearing will
25 be held on June 8th at which evidence will be

1 introduced into the record, including a report from
2 an expert on racial polarization?

3 A. That appears to be what the e-mail states, yes.

4 Q. Did you attend any such meeting?

5 A. I did not.

6 Q. And does this e-mail indicate that the chairs
7 wanted by June 13 to 15 the joint committee to
8 publish all three maps?

9 A. That is what the e-mail states.

10 Q. And does this e-mail go on to include other
11 deadlines?

12 A. It does.

13 Q. All right. Now, let me show you another document
14 which we will mark as Exhibit 398.

15 (WHEREUPON, Exhibit 398 was marked for
16 identification.)

17 BY MR. SPEAS:

18 Q. Do you recognize Exhibit 398, Mr. Oldham, as an
19 e-mail you received from Tom Hofeller along
20 with -- I mean from Tom Farr along with Tom
21 Hofeller on May 18, 2011, at 2:53 in the afternoon?

22 A. That appears to be what it is.

23 Q. And then in this e-mail does Mr. Farr state next
24 Monday, May 23, there will be a meeting in which
25 leadership tells us how to proceed with

1 Congressional? Did I read that correctly?

2 A. That appears to be what the e-mail says, yes.

3 Q. Do you remember attending such a meeting on May 23,
4 2011?

5 A. I don't know. I'd have to -- I'd have to check
6 back and figure out if I did that or not.

7 Q. And the e-mail states also "At that meeting
8 they" -- that is, the chairs -- "want to see draft
9 maps for state senate and state house. Joel is
10 working on these."

11 A. That's what the e-mail says, yes.

12 Q. Do you know were draft maps submitted to the chairs
13 at some time on or around May 23rd?

14 MR. FARR: Objection.

15 MR. SPEAS: Instruct him not to the
16 answer?

17 MR. FARR: Yes.

18 BY MR. SPEAS:

19 Q. And in the last sentence of this e-mail, Mr. Farr
20 states on next Friday, May 27, they -- the
21 chairs -- want to see final maps of State House and
22 Senate and hopefully a couple of Congressional
23 options.

24 Do you know whether that happened?

25 A. Well, it happened at some point. Whether it

1 happened on that date or not I actually can't tell
2 you.

3 Q. Do you know what final draft plans were -- State
4 House and State Senate final draft plans were
5 submitted to the chairs?

6 MR. FARR: Objection.

7 MR. SPEAS: Instruct him not to the
8 answer?

9 MR. FARR: Yes, sir.

10 BY MR. SPEAS:

11 Q. Were -- let me ask this: I assume you can answer
12 the question whether there were final draft plans
13 at some point submitted to the chairs.

14 MR. FARR: We'll stipulate that happened.

15 THE WITNESS: Yes.

16 MR. SPEAS: You'll stipulate what?

17 MR. FARR: That final draft plans were
18 submitted to the chairs.

19 BY MR. SPEAS:

20 Q. Do you know what those plans were? Can you
21 identify those plans by name?

22 A. Not by name because I'm not familiar with
23 Dr. Hofeller's nomenclature inside the computer.

24 Q. Could you identify them by site?

25 A. Maybe.

1 Q. Do you know the characteristics of them?

2 MR. FARR: Objection to form.

3 THE WITNESS: I remember the broad aspects
4 of them. There were significant changes that were
5 made between that point and the final enacted maps.

6 BY MR. SPEAS:

7 Q. Would you describe the plans as you remember them,
8 starting with the House plan?

9 MR. FARR: I'm going to object. This can
10 all be addressed by Dr. Hofeller.

11 THE WITNESS: Yes.

12 BY MR. SPEAS:

13 Q. Can you describe the Senate plan as you recall it?

14 MR. FARR: Objection.

15 MR. SPEAS: And instruct him not to
16 answer?

17 MR. FARR: Yes.

18 MR. SPEAS: Let me show you another document
19 which we will mark as 399.

20 (WHEREUPON, Exhibit 399 was marked for
21 identification.)

22 BY MR. SPEAS:

23 Q. This is an e-mail dated May 18, 2011, from Tom Farr
24 to Clark Benson, Tom Hofeller and you.

25 Do you recognize this?

1 A. Not offhand.

2 Q. Do you know who Clark Benson is?

3 A. I do know who Clark Benson is.

4 Q. Who is he?

5 A. Clark Benson runs a data firm known as Polidata as
6 is up there.

7 Q. Did Clark Benson participate in the North Carolina
8 redistricting in the 2010 cycle?

9 A. Well, he provided data. I don't think he
10 participated beyond that.

11 Q. Do you know what data he provided?

12 A. Data, data.

13 Q. Whatever. Cromartie, Cromartie.

14 A. Right.

15 No, I wouldn't know the exact nature of the
16 data that he provided.

17 Q. Have you worked with Mr. Benson before?

18 A. Yes.

19 Q. Mr. Oldham, I want to show you a map and data sheet
20 previously marked in this case as Exhibit 388 --
21 378, I'm sorry -- for a plan called George 2-2
22 bearing the date May 26, 2011.

23 And I'm sorry, gentlemen, I don't have
24 another copy of it.

25 But if you would take a minute, Mr. Oldham,

1 and look at that and see if you can identify this
2 map.

3 A. Well, I can't identify it specifically. I can kind
4 of recognize that three districts in the northeast
5 are very close to what actually is in the enacted
6 map, close to what's in the enacted map, but I
7 can't tell you specifically what map this is.

8 Q. Do you know whether this is the final draft Senate
9 map that Mr. Farr was informing the map drawers the
10 chairs wanted by the end of May?

11 A. I doubt it.

12 Q. And why do you doubt it?

13 A. Well, I doubt it because as I'm sitting here
14 looking at some districts, they're not as I would
15 think they would be.

16 Q. Which districts are those?

17 A. Well, 11, 10 and 12, for one.

18 Q. What others?

19 A. Wake.

20 Q. 14?

21 A. Well, no. The whole thing. But, you know, I can't
22 be sure without actually seeing the dates on the
23 actual maps.

24 MR. FARR: I just want to state something
25 for the record. We've produced hundreds of

1 thousands of documents in this case, and it's our
2 position that Exhibits 397, 398 and 399 should not
3 have been produced because they're protected by the
4 Work Product Doctrine and the attorney-client
5 privilege and consulting expert privilege as it
6 relates to Mr. Benson.

7 MR. SPEAS: Well --

8 MR. FARR: They were produced by mistake.

9 MR. SPEAS: Let me say for the record
10 those documents relate to the schedule the General
11 Assembly applied and followed in enacting the plans
12 that were for the citizens of North Carolina, and
13 why the schedule or how the schedule could be
14 encompassed within the scope of the attorney-client
15 privilege or the attorney work product privilege is
16 beyond me.

17 MR. FARR: Well, Mr. Speas, I'll amend it
18 to the extent you said -- made that comment, I
19 agree with you, but there are portions of these
20 e-mails that go beyond discussing the schedule and
21 that would be the portions that I would focus my
22 comments on.

23 MR. SPEAS: Let's mark this as Exhibit 400.

24 (WHEREUPON, Exhibit 400 was marked for
25 identification.)

1 BY MR. SPEAS:

2 Q. Mr. Oldham, I have put in front of you a document
3 that is marked Exhibit 400 which is a map labeled
4 NC House HOMP2 - May 25, 2011.

5 Do you recognize that map?

6 A. I don't recognize it from that name. I mean --

7 Q. You do or don't? I'm sorry.

8 A. I don't recognize it from that name. This appears
9 to be some version of the map before the Wilmington
10 majority-minority district was removed.

11 There are a number of things that are wrong
12 with this map.

13 Q. Mr. Oldham, I am going to ask the court reporter to
14 mark a set of colored maps as Exhibit 401. And I
15 will report to you, Mr. Oldham, that these are the
16 maps that your lawyer produced to us in response to
17 our subpoena.

18 (WHEREUPON, Exhibit 401 was marked for
19 identification.)

20 BY MR. SPEAS:

21 Q. Would you examine Exhibit 401, Mr. Oldham, and tell
22 me whether or not this is in fact a set of maps
23 that you worked on yourself as a part of the 2010
24 redistricting.

25 A. That is correct.

1 Q. What are these maps?

2 A. These maps -- that copier didn't come out very
3 well.

4 Q. That's true.

5 A. These maps are all maps that are involved in trying
6 to analyze the groupings for the various -- that
7 you're going to have to draw the districts within
8 and how the Voting Rights Act is going to affect
9 that.

10 Q. And is this analysis of the groupings for the
11 House?

12 A. Well, 401 clearly is, yes.

13 Q. And 401, I would represent to you, is each of
14 the -- includes each of the maps that we received
15 from Mr. Farr that indicates --

16 A. You're including the subsequent maps as well?

17 Q. Yes.

18 A. Let me look through that because these may not all
19 be House.

20 The second one is clearly a House.

21 The third one is a Senate.

22 Q. All right.

23 A. No, I take that back, it's not. It's also a House.
24 I had to look at it a little more closely.

25 The next one is also a House.

1 The one following that, which would be
2 number 5, is also a House.

3 That is certainly a look at various House
4 districts that have been drawn.

5 Q. Okay.

6 A. And basically determined they don't fit at all.

7 The next one is also a House.

8 Yeah, I remember that one. That one is an
9 experiment that didn't work. That's a House.

10 That's also a House.

11 The next one is likewise a House.

12 And the last one is also a House.

13 Q. And were you drawing these maps in your capacity as
14 a map drawer and not as a lawyer?

15 A. Well, actually, I would assert that I was drawing
16 these as a lawyer, but we are consenting to discuss
17 this topic today.

18 Q. Okay. When did you draw these maps encompassed
19 within Exhibit 401?

20 A. Oh, it varies. I was drawing these throughout the
21 process. I drew a number of them at the beginning.
22 I drew a number during the process.

23 As people would draw minority districts or
24 draw other districts that in some way, shape, form
25 or fashion potentially affected how the groupings

1 were going to be put together, I would attempt to
2 analyze that and attempt to analyze in particular
3 how minority districts were affecting the
4 groupings.

5 Q. And did -- what tools did you use to draw these
6 maps?

7 A. A calculator, a group of colored pencils,
8 obviously, the maps with populations on them, and a
9 spreadsheet which Dr. Hofeller had prepared for me
10 of the population ranges in which you could
11 actually put groupings together.

12 Q. Did you use any software in drawing these clusters?

13 A. No. Discovered it was actually far easier to do
14 this with pencil and paper than it was try to use
15 the machine.

16 The machine actually became somewhat
17 cumbersome, so what I would actually do is after it
18 became clear what the answer was, I would go back
19 to Dr. Hofeller usually or -- but it was
20 principally Dr. Hofeller and basically tell him
21 what I had figured out and we would then -- if it
22 was something that was easy to fix, he would go
23 ahead and put the new grouping into his machine.
24 If it was something that was not easy to fix, then
25 we would have to have a larger discussion about it.

1 Q. And what were you trying to figure out?

2 A. What I was trying to figure out was how the drawing
3 of successive minority districts would affect how
4 you had to draw the county groupings in the plan.
5 That was not a simple process.

6 Q. Did you draw or were Voting Rights districts drawn
7 first?

8 A. The Voting Rights Act -- the way -- let me take you
9 back and kind of explain.

10 Q. All right.

11 A. At the beginning of the process, Dr. Hofeller did
12 an analysis of the minority concentrations in the
13 state and identified where those were, the broad
14 areas in -- that were encompassed and determined
15 how many compact minority districts would be drawn
16 in each one of those areas if we ignored county
17 lines altogether.

18 Then we went back and did an analysis
19 using the formula that is provided in Stephenson
20 for how you group the counties, which is actually
21 very simple. You're doing the ones, the twos, the
22 threes, the fours and so on.

23 If you were to do that without doing any
24 minority districts, that would actually yield you,
25 in most cases, a single county grouping plan.

1 There could be an occasional situation where it
2 might produce two or three, but that's going to be
3 the max it's really going to produce. In most
4 cases it's going to produce one.

5 What makes it difficult or somewhat complex
6 is you know you can't do that, and that's where
7 determining how the minority districts come into
8 play becomes so critical to the process.

9 What we would then do is having determined
10 where the compact minority districts could be
11 drawn, we then attempted to do the ones, the twos,
12 the threes and see where that left us regarding the
13 minority districts.

14 That basically told us -- we kind of knew
15 to begin with that certain groupings just weren't
16 going to be available. Obviously, Scotland/Hoke
17 couldn't be used; obviously, Beaufort/Craven
18 couldn't be used.

19 Q. Why could Scotland/Hoke not be used?

20 A. Well, everybody drew a minority district across
21 Scotland/Hoke. Everybody drew a minority across
22 Craven/Beaufort because you have an existing
23 minority incumbents. Everybody drew an incumbent
24 across Johnston/Sampson. So those three were gone.

25 And you knew you couldn't draw the single

1 county in Wilson because, again, there's an African
2 American incumbent who would have no capability of
3 surviving in that district, in Section 5 covered
4 county. Most of these are that I just listed off.
5 So we knew those weren't going to be there.

6 So that has a change on how the counties
7 come together because what happens is when you lay
8 down the ones, it's usually not a big issue because
9 when you put the ones down on the map, there are no
10 isolated populations in the state, but when you put
11 the twos down on the map, you usually get some
12 population around the state that are surrounded by
13 a group of ones and twos that are either too small
14 or too large to be grouped together.

15 That isolated population has to be released
16 to some other population in the map so that it can
17 be grouped. You have to come up with what's the
18 most efficient way to do that. It will never be a
19 one. It will have to be a two. So you have to
20 release it in a way that will preserve the most
21 amount of twos.

22 Well, the way you would release it if there
23 were no minority districts is liable to be
24 dramatically different than the way you would
25 release it if there is a minority district, because

1 if one of the minority districts is drawn on one of
2 the edges of the isolated population, you're going
3 to always release the isolated population through
4 that draw because that wouldn't cause you to have
5 to eliminate another two. That actually comes into
6 play with Scotland/Hoke.

7 So each time you're drawing a minority
8 district, you are potentially affecting the redraw
9 of large portions of the map, including a lot of
10 non-majority-minority districts, so the trick is to
11 figure out how the majority-minority districts are
12 affecting your efficiency in terms of maximizing
13 the ones, twos and threes and so on to the extent
14 practicable.

15 That gets changed every time you draw
16 another majority-minority district. And part of
17 this is figuring out can you draw a majority-
18 minority district within specific county
19 combinations that would be more efficient in terms
20 of doing this.

21 This is -- this is why this becomes an
22 iterative process. You begin to look at these maps
23 and you go, well, if it's possible to draw a
24 minority district in, say, this two-county
25 combination, which is in the area we previously

1 identified as having compact majority-minority
2 districts, if we can draw one there, we can draw a
3 more efficient Stephenson map.

4 And so you go back to Dr. Hofeller and you
5 go, "Is it possible to draw one in there?" And he
6 gives it a shot. And we just go through iterations
7 until we figure out where we can actually draw
8 these and what our most efficient Stephenson
9 grouping would then be.

10 Q. All right. Let me ask you a number of questions.

11 The process you have described is at play
12 with regard to maps -- or excuse me -- with regard
13 to districts that are located in more than one
14 county, VRA districts located in more than one
15 county?

16 A. Correct.

17 Q. But it is not at play with regard to VRA districts
18 located within a single county?

19 A. No. What we're looking at here wouldn't really be
20 affecting VRA districts that are in a single
21 county.

22 This is about the VRA districts that affect
23 the groupings, but understand that a VRA district
24 on the eastern side of the state can actually
25 affect how we're grouping things in the center.

1 Q. I understand, but this is my next question: Are
2 you aware of any plans that formed a VRA district
3 in either the House plan or the Senate plan in more
4 than one county west of Wake county?

5 A. Well, yes.

6 MR. FARR: I object to that.

7 THE WITNESS: Sorry.

8 BY MR. SPEAS:

9 Q. Where would that have been?

10 MR. FARR: Objection.

11 THE WITNESS: He objected. I'm not going
12 to answer that.

13 MR. FARR: You can ask Dr. Hofeller about
14 that. You've already asked John Morgan and Joel
15 Raupe about that.

16 MR. SPEAS: Am I asking a legal question?

17 MR. FARR: Yes. You are asking him a
18 question that would require giving legal advice,
19 and we're not going to get into that.

20 BY MR. SPEAS:

21 Q. Did you in your entire time with the North Carolina
22 redistricting in 2010 ever see a plan which drew a
23 Voting Rights district in any area west of Wake
24 county that covered two counties?

25 MR. FARR: Objection.

1 MR. SPEAS: Instruct him not to answer?

2 MR. FARR: Yes, because we told you why
3 he's here today. He's not going to give work
4 product testimony or information he acquired in
5 privileged communications with Senator Rucho or his
6 agents.

7 He's here to testify about county
8 groupings.

9 MR. SPEAS: And this question is about
10 county groupings.

11 MR. FARR: That's correct, but it's not
12 about how the county groupings were made.

13 MR. SPEAS: I didn't ask him how they were
14 made. I asked him whether in his entire experience
15 he ever saw a map drawn by anybody that had a VRA
16 district in either the House or the Senate plans
17 west of Wake county that covered more than one
18 county.

19 And you're instructing him not to answer
20 that?

21 MR. FARR: He can answer that question,
22 but I'm not going to say -- we'll see what the next
23 questions may be.

24 THE WITNESS: The answer is yes.

25 BY MR. SPEAS:

1 Q. Where are those?

2 A. It's in the enacted map. Scotland, Hoke, Richmond.

3 Q. Any others?

4 A. I don't think so.

5 Q. Okay. Anything in the Senate map? You were
6 talking about the House map.

7 A. I was talking about the House map.

8 I think the answer to that is no.

9 Q. Now, you said, as I understood your testimony, that
10 Dr. Hofeller identified the places in the state
11 without regard for county lines where compact
12 majority-minority districts could be drawn.

13 Did I hear you correctly?

14 A. Correct.

15 Q. What criteria did Dr. Hofeller apply in determining
16 what is a compact majority-minority district?

17 MR. PETERS: Objection.

18 MR. SPEAS: Instructing him not to the
19 answer?

20 MR. PETERS: No. If he can answer.

21 MR. FARR: He can answer this as it
22 relates to the construction of the county groups.

23 MR. SPEAS: Okay.

24 MR. FARR: If he can answer it.

25 THE WITNESS: Dr. Hofeller's very

1 experienced in this. I've worked with Dr. Hofeller
2 on this subject for many years. We are examining
3 at this point in taking a look at districts of that
4 type the type of majority-minority district that
5 has generally been recognized in Section 2
6 litigation around the country as being compact, and
7 this is an analysis without county lines.

8 BY MR. SPEAS:

9 Q. Okay. What distinguishes the compact from the
10 non-compact?

11 MR. FARR: To the extent that you may
12 answer that as it relates to the construction of
13 county groups.

14 THE WITNESS: The best examination is to
15 look at districts that have been found to be
16 compact or not compact in various cases around the
17 country and use those as a guide.

18 BY MR. SPEAS:

19 Q. And did you provide Mr. Hofeller guidance in that
20 regard by identifying the districts that had been
21 found compact around the country by courts?

22 A. Assuming that there's no comments --

23 MR. FARR: This is fine for purposes of
24 explaining how the county groupings were
25 constructed.

1 THE WITNESS: Dr. Hofeller has been -- he
2 certainly -- I have discussed with him here, but
3 frankly, I have discussed this topic with
4 Dr. Hofeller for so many years he pretty much knows
5 my views on this subject.

6 BY MR. SPEAS:

7 Q. What are your views?

8 A. I think then we really are getting into advice, but
9 there are -- I have -- we have published a number
10 of maps and we have examined the various cases, and
11 Dr. Hofeller has the various maps of a number of
12 districts that have been found compact and not
13 compact around the country and they are in his
14 possession.

15 Q. All right. Mr. Oldham, let's take a look at the
16 fifth map in Exhibit 401.

17 A. Sure.

18 Q. You've got the colored version. And to make sure
19 we're talking about the same map, it's a map that
20 has across the bottom 36, 12, 13 and so forth.

21 A. Uh-huh.

22 Q. Do you know which VRA districts were being analyzed
23 in this map?

24 A. Well, the principal purpose of this map is less VRA
25 and more how do we get rid of the 121st.

1 One of the problems that occurred in the
2 House was it is mathematically feasible in the
3 House, not really so in the Senate, but it may
4 become so in future, to end up in a situation where
5 you have either 119 or 121.

6 And you had 121st District appear in most
7 of the grouping maps that you tried to put together
8 this cycle. This was because you have a number of
9 low population groupings that are in the map and
10 that causes there to be an anomaly that results in
11 an additional district. That means you have to
12 produce a grouping that is high enough -- grouping
13 or groupings that are high enough to eliminate that
14 extra district.

15 Q. And this particular map in front of you results --
16 your analysis resulted in 36 total groups?

17 A. Correct.

18 Q. 12 one-county groups?

19 A. Correct.

20 Q. 13 two-county groups?

21 A. Correct.

22 Q. Five three-county groups?

23 A. Yes, that would be appear to be correct.

24 Q. Two, four?

25 A. Yeah.

1 Q. Two, five?
2 A. Yeah.
3 Q. One, six?
4 A. Yes, that would appear to be right.
5 Q. No seven?
6 A. That would be appear to be right.
7 Q. No eight?
8 A. Correct.
9 Q. One, nine?
10 A. Correct.
11 Q. And one, 14?
12 A. That would appear to be correct.
13 Q. And if you would look with me at the map which is
14 the sixth page in Exhibit 401 which has across the
15 bottom a series of numbers beginning with 41. Do
16 you see that?
17 A. I'm lost now.
18 Q. There it is.
19 A. Gotcha.
20 Q. No, no. Back one.
21 A. This is right, isn't it?
22 Q. No. 41.
23 MR. FARR: 41. I thought you said 31.
24 BY MR. SPEAS:
25 Q. I'm holding up the wrong one.

1 A. Never mind. That's why I'm confused.

2 MR. FARR: 41, okay.

3 BY MR. SPEAS:

4 Q. We are looking at a map in Exhibit 401 that has
5 across the bottom of the page a series of numbers
6 beginning with 41. Do you see that?

7 A. Correct. Yes.

8 Q. And which VRA map was being analyzed here?

9 A. Well, this was actually an experiment to see where
10 a number of groupings would come up. This map
11 actually can't be used. The reason is you'll
12 notice it has the Johnston/Sampson pair in it, it
13 has the Hoke/Scotland pair in it, it has the
14 Beaufort/Craven pair in it, and it still has the
15 Wilson unbroken in it.

16 This is actually more a look at a number of
17 other possibilities and is really kind of a
18 theoretical map so that I could figure out how to
19 fit some of these things in here. And it's, again,
20 me trying to work my way through where we could fit
21 VRA districts and still eliminate the 121st
22 problem.

23 Q. And would this map, if it had been feasible,
24 resulted in 41 groupings?

25 A. It would have, but again, you can't draw -- you got

1 four groupings in here you can't draw.

2 Q. And did you at any point examine the map and the
3 populations of North Carolina's counties to
4 determine the maximum number of county groupings
5 that could be drawn?

6 A. I did a partial analysis of that. To take it all
7 the way just really didn't seem terribly productive
8 because I knew these couldn't be drawn. I know the
9 basic place of where it is, but --

10 Q. Now, would you look at the map in Exhibit 401 that
11 has a series of numbers beginning 36, 12 and 14
12 across the bottom.

13 A. Yes.

14 Q. And it is marked at the top as New P Pod.

15 A. Yes.

16 Q. What does New P Pod refer to?

17 A. Well, it's referring to another version of the map
18 I just talked about trying to figure out where a
19 number of twos can be drawn. It actually didn't
20 put the most useful map in here.

21 Q. I put all that we received --

22 A. There's one that has -- oh, this one.

23 Q. We'll get to that in a minute. Let's finish up
24 with this.

25 A. This is just kind of an examination, again, like

1 the other one, trying to figure out where our most
2 useful twos and threes were going to be if we're
3 going to try and eliminate 121 and get rid of --
4 and try and get minority districts drawn.

5 Again, this is not a map that could be used
6 because it's got two groupings in it that can't be
7 drawn.

8 Q. What does New P Pod refer to, Mr. Oldham?

9 A. I think it probably referred to New Perfect Pod.

10 Q. I'm sorry?

11 A. Perfect Pod, but it wasn't perfect, was it.

12 Q. All right. A moment ago you indicated that there
13 is a map in Exhibit 401 that you think better
14 illustrates the points.

15 A. Well, not as much it better illustrates, but this
16 was a map that was extremely useful to me as I was
17 doing analysis.

18 Q. Which map is that?

19 A. It's this one.

20 MR. FARR: Can we identify some of the
21 notes at the bottom so we know what we're talking
22 about which map.

23 BY MR. SPEAS:

24 Q. Well, I haven't found it yet.

25 A. I think it's the second one in the stack. I know

1 that's terribly hard to read, particularly this
2 small.

3 Q. Can you read -- there are --

4 A. But I'll tell you why it's useful. It's
5 identifying pairs threes, fours, fives, even a few
6 sixes, but particularly in the eastern part of the
7 state, which allows me to reference this map as
8 people start drawing minority districts so that I
9 could know what the effect of that is going to be,
10 and I can actually try and get ahead of the game a
11 little bit as to where the minority districts are
12 going.

13 Q. Is this one of the first maps you drew?

14 A. Yes. This is early.

15 MR. FARR: Can I just ask a question.

16 What's the language here at the bottom on
17 the right-hand side in red ink? What does that
18 say?

19 THE WITNESS: Nine forms anomaly 11 to 10.

20 MR. FARR: Just wanted to be able to
21 identify it.

22 BY MR. SPEAS:

23 Q. What does that mean, Mr. Oldham?

24 A. That is, again, trying to deal with the 121 issue.

25 Q. There's some other handwritten notes at the bottom

1 of that page that are very hard to read on every
2 version of this map I've seen. Can you read those
3 words into the record?

4 A. Well, yeah. That one is actually -- can't read my
5 handwriting. Substitute Duplin for Pender and
6 north resolution produces better pods pop. I think
7 that's what that means.

8 Q. Now, in your testimony here you have used the
9 phrase "most efficient grouping."

10 A. Yes.

11 Q. Can you describe for me what the most efficient
12 grouping was as you used that term a minute ago?

13 A. Well, the most efficient groupings are actually the
14 ones we ended up with in the enacted map.

15 Q. And what makes it the most efficient?

16 A. It has the most ones, the most twos, the most
17 threes and so on that we could draw and still draw
18 the minority districts, and as it turns out,
19 really, probably the most efficient draw you could
20 make, period, because no one was going to draw
21 Scotland/Hoke, no one was going to draw
22 Johnston/Sampson, no one was going to draw
23 Beaufort/Craven, no one was going to draw Wilson
24 solo.

25 And if you were going to do that, then the

1 maximum number of twos anybody was going to be able
2 to come up was going to be 15, and if we could draw
3 our minority districts and still produce 15, that
4 map was going to be -- I don't want to -- they say
5 the Titanic was unsinkable -- it was going to be
6 extremely hard for someone to find a map that was
7 better than that under Stephenson criteria.

8 Q. Now, am I correct that you determined the most
9 efficient grouping based on the most ones, most
10 twos and most threes and not on the most total
11 groupings?

12 A. That is correct.

13 Q. And is it correct that you determined the most
14 efficient grouping based on ones -- the most ones,
15 twos and threes and not the most counties split?

16 A. Correct.

17 Q. And is that the advice you gave Senator Rucho and
18 Representative Lewis?

19 MR. FARR: Objection.

20 BY MR. SPEAS:

21 Q. Is that the advice you gave Mr. Hofeller?

22 MR. FARR: Objection.

23 BY MR. SPEAS:

24 Q. Now, let's look at a set of additional maps that
25 you provided us that are for the Senate. And I

1 would ask the court reporter to mark these at
2 Exhibit 402.

3 (WHEREUPON, Exhibit 402 was marked for
4 identification.)

5 BY MR. SPEAS:

6 Q. What is Exhibit 402, Mr. Oldham?

7 MR. FARR: Can I look?

8 MR. SPEAS: I will represent to you,
9 Mr. Oldham, that I have given you a set of maps
10 that your lawyer provided us, and the maps that are
11 included in 402 were all labeled in the production
12 as Senate maps.

13 THE WITNESS: Okay. Well, the first one
14 certainly is as is the second as is the third as is
15 the fourth as is the fifth as is the sixth as is
16 the seventh as is the eighth as is the ninth as is
17 the tenth as is the eleventh as is the twelfth as
18 is the thirteenth.

19 Did I count those correctly?

20 BY MR. SPEAS:

21 Q. Thank you, Mr. Oldham.

22 Did you draw these maps on the Senate side
23 for the same purposes that you drew the maps on the
24 House side described in or included in Exhibit 401?

25 A. That is correct, except there was a certain --

1 these were easier because there was no 121 problem.

2 Q. And in drawing these maps, did you apply the same
3 convention that you applied with the House maps,
4 that is, the most efficient map is one that groups
5 the most ones, twos and threes and not the one that
6 groups the largest number?

7 A. Correct.

8 Q. And the convention that the most efficient is the
9 one that draws the most ones, twos and threes and
10 not the one that splits the fewest counties?

11 A. Correct.

12 Q. And you just testified that drawing the Senate was
13 easier.

14 A. Yes. At least in terms of that aspect to the
15 groupings, yes.

16 Q. And is it true in the Senate plan as it was in the
17 House plan that there is no Senate district west of
18 Wake county that encompasses more than one county?

19 A. As long as you're not considering Hoke and
20 Cumberland to be west of Wake county, which I think
21 Hoke probably is.

22 Q. But other than a district in Hoke or Cumberland
23 county --

24 A. Right.

25 Q. -- my statement would be accurate?

1 A. Correct.

2 Q. And in identifying the compact majority-minority
3 districts that you were testing, did
4 Mr. Hofeller -- Dr. Hofeller apply the same
5 convention for determining compactness of those
6 districts that you described earlier?

7 A. He did. In fact, it's relatively easy for a lot of
8 these because one reason you do the House before
9 you do the Senate is the Senate district is two and
10 two-fifths House districts.

11 Q. And looking at the first map in Exhibit 402, the
12 numbers across the bottom, beginning with the
13 number 28, does that reflect that on this
14 particular map there are 28 groupings, there's one
15 one-county grouping, 13 two-county groupings, five
16 three --

17 A. Uh-huh, same convention. Red is one, blue is two,
18 yellow is three, green is four, orange is five.
19 The purple seems to be coming out black.

20 Q. Now, as with the House plan, in drawing the Senate
21 plan, these grouping considerations were not
22 present for any VRA district drawn entirely within
23 a single county?

24 A. Correct.

25 Q. For VRA districts drawn within a single county,

1 what criteria were applied in drawing those
2 districts?

3 MR. FARR: Objection.

4 MR. SPEAS: And instruct him not to
5 answer?

6 MR. FARR: That's correct.

7 MR. SPEAS: Can I take about five minutes?

8 MR. FARR: Sure.

9 (Brief Recess: 12:16 to 12:21 p.m.)

10 BY MR. SPEAS:

11 Q. When you met with --

12 A. Before we go on, I'm not sure if I misspoke or not,
13 but I do want to make one thing clear. I think I
14 may have said that when Dr. Hofeller examined for
15 the minority compact populations I may have said
16 districts. I meant to say populations. If I
17 did -- I'm not sure I did say populations, but if
18 so, I'd like to correct the record.

19 Q. When you would confer either in person or by some
20 other means with Senator Rucho and Representative
21 Lewis, was Mr. Hofeller typically present in person
22 or by phone or other electronic means?

23 A. Sometimes yes, sometimes no.

24 Q. More often than not he was present?

25 A. Probably.

1 Q. When you were involved in examining the clustering
2 issue and in drawing districts, did you keep count
3 of the counties that were being split?

4 A. No.

5 Q. When you were involved in investigating the
6 clustering issue and also in drawing maps, did you
7 keep count of the total number of clusters being
8 drawn?

9 MR. FARR: He can answer that to the
10 extent he's answering his involvement in the
11 groupings, but not as to the question of drawing
12 maps.

13 BY MR. SPEAS:

14 Q. Can you answer the question with Mr. Farr's -- are
15 you instructing him not to answer the question in a
16 broader sense because of the attorney-client
17 privilege?

18 MR. FARR: Yes, he's not going to talk
19 about maps and giving legal advice to Rucho or
20 Lewis. We've made him available to talk about his
21 development of the county groups.

22 THE WITNESS: Can you restate the question
23 for me, please.

24 MR. FARR: He wanted to know when you were
25 doing the county groups with the VRA districts, did

1 you keep track of how many divided counties there
2 were.

3 Was that correct, Eddie?

4 MR. SPEAS: I asked that question a moment
5 ago. This question was whether he kept count of
6 the total number of clusters.

7 MR. FARR: Okay. Sorry.

8 THE WITNESS: More often than not,
9 probably so, not for any particular reason other
10 than I was interested.

11 BY MR. SPEAS:

12 Q. I want to ask you about a series of maps that have
13 your name on them. These maps that I am going to
14 ask you about are maps that were contained within
15 the maps produced by Mr. Hofeller early in this
16 matter. Excuse me for just a minute.

17 (Discussion held off the record.)

18 MR. SPEAS: We're going to regroup on that
19 a little bit and, actually, Ms. Earls is going to
20 ask you about that.

21 THE WITNESS: Okay. That's fine. I'll
22 get them in a minute.

23 MR. SPEAS: You'll get them in a minute,
24 yes, you will.

25 Let's mark this as Exhibit 403.

1 (WHEREUPON, Exhibit 403 was marked for
2 identification.)

3 BY MR. SPEAS:

4 Q. Mr. Oldham, I have put a map in front of you which
5 is Exhibit 403 which is labeled NC Pod Try.

6 Is this a pod or clustering map that you
7 drew?

8 A. No, I didn't even draw this. This would appear to
9 be -- did this come from Dr. Hofeller's --

10 Q. I believe it did.

11 A. Then I would say this is probably -- and I have to
12 avoid speculating here. I would assume this is an
13 attempt to -- one of our iterations that obviously
14 failed looking at it because I can look at it and I
15 can see problems all over it.

16 Q. Let's mark this as Exhibit 404.

17 (WHEREUPON, Exhibit 404 was marked for
18 identification.)

19 BY MR. SPEAS:

20 Q. Exhibit 404 is a map entitled NC New Pod B After
21 Corrections.

22 Would you examine this and tell me whether
23 this is a pod or a cluster map that you drew?

24 A. No, I didn't draw any of these because these have
25 districts in them. Again, this would appear to be

1 a failed iteration.

2 (WHEREUPON, Exhibit 405 was marked for
3 identification.)

4 BY MR. SPEAS:

5 Q. Mr. Oldham, Exhibit 405 is a map entitled NC House
6 Pod Calculations.

7 Is this a pod or a group map that you drew?

8 A. This is a grouping map that was examined, but this
9 one, too, has a flaw in it because of Wilson.

10 Q. Is this for the House or the Senate?

11 A. This would be for the House.

12 Q. And the flaw in Wilson is what?

13 A. Well, you can't draw that. The minority incumbent
14 can't survive in that.

15 (WHEREUPON, Exhibit 406 was marked for
16 identification.)

17 BY MR. SPEAS:

18 Q. And let me show you Exhibit 406. Exhibit 406 is
19 entitled NC House Dale B.

20 Do you recognize this?

21 A. Well, it's another look at a grouping. Again, it's
22 another one that won't work.

23 Q. Why won't it work?

24 MR. FARR: You can give him an answer on
25 that.

1 THE WITNESS: Well, there's probably a
2 number of reasons, but looking at it right offhand,
3 the Wilson problem is still sitting there,
4 Scotland/Hoke is still there and that won't work,
5 so there are a number of problems I can just see
6 right off the bat.

7 BY MR. SPEAS:

8 Q. On the far-left, upper portion of this map in the
9 northwest corner of the state, as there is across
10 the map, there are labels. That one is labeled
11 P31-1 and under that minus 1.39 percent.

12 Can you tell me what the information is
13 conveyed in that small tag?

14 A. The nomenclature is Dr. Hofeller's so I don't know
15 what the nomenclature is. I don't really want to
16 assume that I actually know, but I feel fairly safe
17 in saying the lower number is the deviation in the
18 grouping.

19 Q. Is P31-1 possibly -- does it possibly indicate
20 there are 31 -- that has the 31st group and it has
21 one county?

22 A. Probably not.

23 (WHEREUPON, Exhibit 407 was marked for
24 identification.)

25 BY MR. SPEAS:

1 Q. Let me ask the court reporter to mark as
2 Exhibit 407. Exhibit 407 is entitled NC House Dale
3 New Pods B.

4 Do you recognize that?

5 A. I don't recognize it per se, but this appears to be
6 a map that's getting closer to being usable. It's
7 still got problems.

8 Q. What are the problems with this one?

9 A. Well, Wilson is still jumping off the page at me,
10 so this was obviously a failed map. We have a
11 problem up in the north in Granville, Vance,
12 Warren, Northampton, so there are a number of
13 potential issues, problems with this map. It would
14 be another failed iteration.

15 Q. We will mark the map as Exhibit 408.

16 (WHEREUPON, Exhibit 408 was marked for
17 identification.)

18 BY MR. SPEAS:

19 Q. Exhibit 408 is entitled NC House Dale New Pods.

20 Do you recognize this House as one you
21 drew?

22 A. No, I didn't draw this.

23 This is -- again, this is -- it's a failed
24 iteration and is why we ultimately discarded that.

25 ///

1 (WHEREUPON, Exhibit 409 was marked for
2 identification.)

3 BY MR. SPEAS:

4 Q. Exhibit 409 is a map entitled NC House Jones Pod
5 Broken.

6 Do you recognize that?

7 A. Yes.

8 Q. Tell me what it is.

9 A. It's another failed iteration, but this is one
10 where there was -- where the more compact district
11 was drawn for -- I think that's District 12 because
12 I think it's named that, but that won't fit into
13 the groupings and therefore this had to be
14 discarded.

15 (WHEREUPON, Exhibit 410 was marked for
16 identification.)

17 BY MR. SPEAS:

18 Q. Do you recognize Exhibit 410? It is entitled Pop
19 Calc 2.

20 A. Yes. This is actually close but not quite to the
21 point we were at before it was decided not to draw
22 the Wilmington district, but this isn't quite it.
23 This is -- but this is actually close because it's
24 got the 121 solve in it.

25 The problem it has in it is Wilson isn't

1 fixed for the minority district. It also has
2 the -- I just realize it has one of the African
3 American incumbents in the wrong place, too, but
4 anyhow.

5 (WHEREUPON, Exhibit 411 was marked for
6 identification.)

7 BY MR. SPEAS:

8 Q. Exhibit 411 is entitled NC House 16 District Pod.
9 Can you -- do you recognize this?

10 A. It would be easier if I had a bigger shot.

11 MR. FARR: Did you draw this?

12 THE WITNESS: No, I did not draw this.

13 This is one of Dr. Hofeller's, but this is -- I'll
14 stop there.

15 BY MR. SPEAS:

16 Q. Do you know why Dr. Hofeller drew this?

17 A. Well, this is the same situation we had before.
18 We're trying to find the minority districts -- to
19 draw the minority districts in the most efficient
20 map or podding map or grouping map, excuse me. And
21 this is -- this is -- this I think is pre- -- I'm
22 pretty sure this is before we decided not to draw
23 the Wilmington district.

24 Q. Do you know why you decided not to draw the
25 Wilmington district?

1 MR. FARR: If you have privileged
2 information on that point, then I instruct you not
3 to answer it, but if you have non-privileged
4 information, then you can answer it.

5 THE WITNESS: Based on instruction of
6 counsel, I better not answer that.

7 BY MR. SPEAS:

8 Q. Do you have non-privileged information relating to
9 that question, Mr. Oldham?

10 A. I don't believe so.

11 MR. FARR: Can I talk with him for a
12 second? I won't if you don't want me to.

13 MR. SPEAS: I just ask the court reporter
14 to note the conference with counsel.

15 MR. FARR: Okay.

16 (Discussion held off the record.)

17 BY MR. SPEAS:

18 Q. After conferring with counsel, do you have anything
19 you want to add?

20 A. No.

21 (WHEREUPON, Exhibit 412 was marked for
22 identification.)

23 BY MR. SPEAS:

24 Q. Exhibit 412 is entitled NC House Forsyth
25 Experimental.

1 Do you recognize that?

2 MR. FARR: Does this have anything to do
3 with county groupings, Mr. Oldham?

4 THE WITNESS: Not that I can perceive, no.

5 BY MR. SPEAS:

6 Q. Do you recognize the map?

7 A. I recognize portions of it. Do I know exactly --
8 the fact that it has Forsyth Experimental causes me
9 to really wonder what this was. I don't really
10 know. I do recognize certain districts in here,
11 but they're not in Forsyth.

12 Q. At one point were you experimenting with drawing a
13 VRA district in Forsyth in Guilford county?

14 MR. FARR: Objection; instruct you not to
15 answer that question.

16 You can ask Dr. Hofeller.

17 (WHEREUPON, Exhibit 413 was marked for
18 identification.)

19 BY MR. SPEAS:

20 Q. Exhibit 413 is entitled NC House Halifax Martin
21 Pod.

22 Do you recognize this?

23 A. Well, I recognize part of this. This is
24 obviously -- this has a few districts that we
25 clearly would have decided didn't work.

1 Q. And which districts were those?

2 A. Well, clearly we don't have Franklin/Nash paired,
3 we don't have the Edgecombe/Martin pair in here.
4 I'm not sure when this would have been drawn. And
5 I'm not sure that Mobley isn't showing up in the
6 wrong place which is something we ended up having
7 to fix. Those kind of jump off the map at you.

8 The rest of them, I don't know. This is
9 obviously a failed iteration. It may not really
10 have been -- it may have just been somebody looking
11 at that in the group.

12 Q. You don't know who that would have been?

13 A. No.

14 (WHEREUPON, Exhibit 414 was marked for
15 identification.)

16 BY MR. SPEAS:

17 Q. Exhibit 414 is entitled NC House Repod Halifax
18 Bertie July 18.

19 Did you draw that?

20 A. No.

21 Q. Do you know who did?

22 A. I believe this would be Dr. Hofeller, but I'm not
23 positive of that. That looks like his nomenclature
24 on the labels.

25 Q. Do you know why he was repoding Halifax/Bertie?

1 A. Yeah, I do. The point I mentioned just a minute
2 ago, we had an African American incumbent in the
3 wrong place and we had to fix it.

4 Q. Who was that African American incumbent?

5 A. Well, I couldn't have told you unless this other
6 map was sitting here which says Mobley, but I will
7 assume, since that's the star, it's right in the
8 right place, that that's the correct name.

9 (WHEREUPON, Exhibit 415 was marked for
10 identification.)

11 BY MR. SPEAS:

12 Q. Exhibit 415, NC House with Pitt Wilson Pod July 4.

13 A. Correct.

14 Q. Did you do this?

15 A. No, I didn't draw this.

16 Q. And is this attempting to address the Wilson county
17 problem that you've referred to?

18 A. That is correct.

19 Q. And how does it address that problem?

20 A. It addresses it by creating another two-county
21 grouping.

22 Q. What is that grouping?

23 A. Pitt and Wilson and by carrying the African
24 American population in Wilson and continuing it in
25 a majority-minority district as it had been

1 previously.

2 Q. And this was done on July 4th?

3 A. I will assume that because that's what the exhibit
4 says, but the exhibit speaks for itself on that
5 matter.

6 MR. SPEAS: Ms. Earls has some questions
7 for you.

8 THE WITNESS: Sure.

9 EXAMINATION

10 BY MS. EARLS:

11 Q. Thank you, Mr. Oldham. As you know, I represent
12 the NAACP, League of Women Voters, A. Philip
13 Randolph Institute and Democracy North Carolina
14 along with several individuals who filed a lawsuit
15 that has been consolidated with this lawsuit. I
16 appreciate your time today, and I will try not to
17 take up too much of your time but I do have some
18 further questions.

19 A. Thank you. Sure.

20 Q. And I would also ask if I ask you a question and
21 there's a document you're aware of that would help
22 you answer that question, would you let me know
23 that because I may be able to find it.

24 First, a quick question about your
25 background. Were you at one time associated with

1 an organization called the Free Enterprise
2 Coalition?

3 A. I have been. I don't really want to talk about
4 cases conducted by other clients, but, yes, I have
5 been.

6 Q. I just want to ask you what is or was the Free
7 Enterprise Coalition?

8 A. The Free Enterprise Coalition was a 501(c)(4).

9 Q. And were you employed by them?

10 A. They were a client.

11 Q. Okay. In your testimony already today you talked
12 about Dr. Hofeller preparing an analysis of
13 minority concentrations, where they were and how
14 many compact majority-minority districts could be
15 drawn in those areas.

16 A. Yes.

17 Q. Was that analysis provided in writing?

18 A. Not that I know of.

19 Q. Was there any kind of written document or
20 spreadsheet or chart or anything that indicated
21 that?

22 A. Wouldn't really need a spreadsheet or chart.
23 You're quite capable of examining it on the
24 Maptitude without any real effort.

25 I mean, the real question is examining the

1 core, determining where that population is.
2 There's always some ability to move that population
3 to the west, to the east, to the north, to the
4 south, to any point on the compass because it's not
5 necessarily an exact defined space, but once you
6 determine that you have a sufficient concentration,
7 then it can be divided in such a way that could
8 yield compact districts, that's -- you essentially
9 have completed the analysis and you know where
10 those districts are, the basic area in which those
11 districts should be drawn.

12 Q. Is there any other information that you would need
13 for that analysis?

14 A. Well, I mean, you obviously have to know from prior
15 experience, as I explained earlier, maps of other
16 districts that have been found to be compact or not
17 compact, you would have to be -- use that to be
18 able to determine what could be drawn in a specific
19 area, but the real question is going to be
20 identifying the concentrations, which is relatively
21 easy using the Maptitude.

22 Q. The information that you referred to, the maps of
23 other districts that were found compact or
24 non-compact and you said that Dr. Hofeller has
25 collected those, do you know where we would find

1 them because they weren't in the materials we
2 received so far.

3 A. Well, I think you can -- you know, they basically
4 come from a variety of cases. Obviously, the Shaw
5 cases. Obviously the Vera v. Bush cases. The case
6 from Chicago. I want to say it's King. Memory is
7 failing me for a moment. Lawyer case from Florida.
8 The Escambia County case, which is an old one, but
9 it's out there. You have the -- I'm going to
10 slaughter pronunciation of this -- the Avoyelles
11 Parish case (phonetic) from Louisiana. You have
12 the case from the '90s in California. It's the
13 usual laundry list. I would actually assume that
14 you would already have these.

15 Q. So was this some kind of document that Dr. Hofeller
16 had with him or shared with the team in
17 North Carolina that had pictures of these maps?

18 A. We have pictures of these maps, yes. They don't
19 actually belong to Dr. Hofeller, but yes.

20 Q. I guess I'm asking if there was such a document, we
21 haven't received it in discovery and I would like
22 to know if it could be produced.

23 MR. FARR: I've never seen it. If we have
24 one and we can find it, we'll produce it.

25 BY MS. EARLS:

1 Q. And then when -- in your -- well, let's look at the
2 maps. Why don't we just do that.

3 A. We referenced the cases. That's where we get maps
4 from. We reference the cases.

5 Q. It was just the way you testified seemed to suggest
6 there was some collection or something that you
7 were using, so that's why I asked about that.

8 A. Well, I mean, we have copies of cases, but I mean,
9 you can get copies of the cases as well.

10 Q. I don't have -- it was just too much to make
11 bunches of copies so I only have one copy of what I
12 am going to ask the court reporter to mark as the
13 next exhibit.

14 MR. FARR: Have these been used
15 previously?

16 MS. EARLS: No, I don't think so.

17 MR. FARR: Let's keep those separate
18 because we have copies of everything else.

19 (WHEREUPON, Exhibit 416 was marked for
20 identification.)

21 BY MS. EARLS:

22 Q. So I'm handing you what's been marked as
23 Exhibit 416. And if you would, could you just read
24 the title of the map so we can identify it.

25 A. Yes, I know. NC Congress IV Dale May 18 District 1

1 Bench.

2 Q. Did you draw that map?

3 A. I did not draw this map. I did --

4 MR. FARR: Objection. If you didn't draw
5 the map, then I instruct you not to the answer the
6 question.

7 BY MS. EARLS:

8 Q. Well --

9 MR. FARR: You may try again. Maybe there's
10 a question that I'll let him answer.

11 BY MS. EARLS:

12 Q. Do you recognize that map?

13 A. I recognize it as a version of something, yes.

14 Q. And what's it a version of?

15 A. It's a version of an attempt to draw the 1st
16 District without going into Raleigh-Durham.

17 MR. FARR: Excuse me. Can we say it's the
18 1st Congressional District?

19 THE WITNESS: 1st Congressional District,
20 yes.

21 BY MS. EARLS:

22 Q. The sheet that's attached to it -- we were provided
23 with block assignment files, and the first page of
24 the exhibit is a partial printout of some of the
25 data that Maptitude provides, and I would just ask

1 if that appears to you -- and we have -- Maptitude
2 prints the file name at the top.

3 Does that appear to be the statistics for
4 that partial map?

5 A. It does appear to be the statistics for that.

6 Q. It has your name on it, correct? I assume that
7 refers to you.

8 Do you know who drew that?

9 A. I don't absolutely know, but I presume this to be
10 Dr. Hofeller.

11 Q. And did he draw that at your request?

12 A. Can I answer that?

13 MR. FARR: Is that -- no, I'll instruct
14 you not to answer that question on the ground of
15 work product and attorney-client privilege.

16 MR. SPEAS: Let me understand, Mr. Farr,
17 is it your view that every map drawn in this case
18 is work product about which we may not acquire
19 except for maps drawn by Mr. Hofeller?

20 MR. FARR: It's my position that
21 Mr. Oldham was not paid by state funds. He was
22 hired to provide legal advice to the leaders of the
23 General Assembly.

24 It's very unusual for an attorney to
25 testify in a case like this. We've made him

1 available to testify about the county grouping
2 issues, and I am not going to let him testify about
3 his conversations with Representative Lewis or
4 Senator Rucho or their agents that may constitute
5 legal advice or work product, and that's my
6 objection and I have nothing more to say about it.

7 MR. SPEAS: Just for the record, let me
8 observe that Mr. Oldham has testified that he did
9 not draw the map, therefore, it is not attorney
10 work product, and so I don't think an objection is
11 well stated.

12 MR. FARR: No. The question was did he
13 tell someone to draw the map. He said he didn't
14 draw it. And then the question was did you tell
15 someone to draw the map, and I believe that would
16 have resulted in the disclosure of attorney-client
17 information or work product information.

18 And you're free to ask Dr. Hofeller about
19 the map when you depose him tomorrow.

20 MS. EARLS: Well, I would say for the
21 record that Dr. Hofeller in addition to not himself
22 being a legislator is also -- has also been
23 identified as an expert witness in this case and so
24 all of the information that Dr. Hofeller has to the
25 extent it relates to anything he's opining on as an

1 expert witness in this case should be available to
2 us.

3 MR. FARR: I think I probably agree with
4 that, Anita, but I don't think this has anything to
5 do with his expert testimony.

6 MS. EARLS: All right. Let's mark this one.
7 (WHEREUPON, Exhibit 417 was marked for
8 identification.)

9 BY MS. EARLS:

10 Q. If you wouldn't mind, if you would tell us the
11 exhibit number and the title of the document you've
12 just been handed.

13 A. NC Congress IV Dale May 18.

14 Q. What's the number of that?

15 A. Exhibit Number is 417.

16 Q. Have you seen this map before?

17 A. I may have, but I don't recognize it, no.

18 Q. Do you know why it's called NC Congress IV Dale?

19 A. I haven't the slightest idea on this one.

20 MR. FARR: Can I see this for just a
21 second. What number is this? 417.

22 (WHEREUPON, Exhibit 418 was marked for
23 identification.)

24 BY MS. EARLS:

25 Q. The court reporter has handed you an exhibit marked

1 418, and the title of that is Dale IV Recovery; is
2 that right?

3 A. That's what it says.

4 Q. Have you seen that map before?

5 A. I may have, but there are things in here that I
6 wouldn't recognize. There are some things I do,
7 but there are some things I wouldn't recognize.

8 Q. What do you recognize?

9 A. I recognize the 12th District. The rest of it
10 is -- this would appear to be a map drawn by
11 Dr. Hofeller, and I'm not exactly sure what it's
12 for.

13 Q. Do you know why it was called Dale?

14 A. I do not know why he called it that.

15 (WHEREUPON, Exhibit 419 was marked for
16 identification.)

17 BY MS. EARLS:

18 Q. What's the title of Exhibit 419?

19 A. Dale IV Recovery 2.

20 Q. Do you recognize that map?

21 A. It appears to be an iteration of the map you just
22 handed me. Aside from that -- as I said, I
23 recognize the district in here, but I don't really
24 recognize the rest of the map.

25 ///

1 (WHEREUPON, Exhibit 420 was marked for
2 identification.)

3 BY MS. EARLS:

4 Q. You've been handed another map that was provided to
5 us in discovery. It's Exhibit 420, and it's called
6 NC Congress Dale Full Orange 2.

7 Have you seen that map before?

8 A. I have seen that map before.

9 Q. What's the -- can you explain the context in which
10 you saw that map? When did you see that map?

11 MR. FARR: If you think that calls for
12 attorney-client or attorney work product
13 information, Mr. Oldham --

14 MS. EARLS: I'm really just asking about
15 the process. I'm trying to understand.

16 MR. FARR: Could you rephrase the
17 question.

18 BY MS. EARLS:

19 Q. Can you tell us when during the redistricting
20 process you might have seen that map?

21 A. I'm not exactly sure when. Probably would have
22 been probably May or June or something. I don't
23 know.

24 MR. FARR: What is it?

25 THE WITNESS: It's a map that was drawn,

1 and it's going to involve my conversations with
2 Hofeller.

3 MR. FARR: Okay. Well, then I instruct
4 you not to answer the question.

5 BY MS. EARLS:

6 Q. So do I understand you were giving legal advice to
7 Dr. Hofeller about this map?

8 A. Yes.

9 We didn't end up using this map, however.

10 Q. Am I right, the Full Orange in the title refers to
11 Orange county being a whole county in that
12 district?

13 A. That is correct, yes.

14 Q. Can I ask why you were looking at options that
15 would keep Orange county as a whole county?

16 A. That clearly is actually advice.

17 Q. Okay.

18 (WHEREUPON, Exhibit 421 was marked for
19 identification.)

20 BY MS. EARLS:

21 Q. I'll ask you to take a look at what's been marked
22 as Exhibit 421, and it's titled NC Congress IV Dale
23 Full Orange May 24.

24 Is it fair to say that was a map that was
25 looked at at least as early as May 24th?

1 A. The exhibit speaks for itself in terms of the date.

2 Q. You don't have any independent recollection?

3 A. I don't have an independent recollection. While I
4 don't recognize the other districts that are in
5 here, I do recognize the district that's labeled
6 14, which I'm not quite sure why it's labeled 14,
7 and the district that's labeled 12.

8 Q. And how do you recognize -- why do you recognize
9 those districts?

10 A. Because I did both of those districts. I examined
11 them.

12 Q. And then did you give legal advice based on your
13 examination of those districts?

14 A. Can I answer that?

15 MR. FARR: Yeah.

16 THE WITNESS: Yeah, I did.

17 (WHEREUPON, Exhibit 422 was marked for
18 identification.)

19 BY MS. EARLS:

20 Q. Next you're being handed an exhibit marked 422, and
21 it's map and statistics entitled NC Congress 3 BLK.
22 I assume that stands for black.

23 A. I would assume, though the exhibit speaks for
24 itself.

25 Q. Do you remember seeing this map?

1 A. Yes, or some version of it. I can't say that's the
2 exact map but, some version of this, yes.

3 Q. Was this an attempt to see if it was possible to
4 draw three black Congressional districts in
5 North Carolina?

6 A. I don't believe that the district that's labeled 13
7 here is African American, but I could be wrong.

8 It's not. So I don't think it was an
9 attempt to build three.

10 (WHEREUPON, Exhibit 423 was marked for
11 identification.)

12 BY MS. EARLS:

13 Q. So you've been handed what's been marked as
14 Exhibit 423, which is -- there's only one district
15 in that map and on the statistics, but it does bear
16 the title NC Congress Dale District 1 Only.

17 Do you recognize that map?

18 A. Yes, I do.

19 Q. Is this a district -- did you have any involvement
20 in the drawing of this district?

21 MR. FARR: Objection.

22 BY MS. EARLS:

23 Q. Can you tell us why it's called Dale District 1?

24 A. I can take a guess as to why Dr. Hofeller put it
25 there but I'm not going to.

1 Q. But you do recognize this as a map that you looked
2 at?

3 A. I do recognize this as a map I looked at. I
4 recognize this as -- yeah, he hadn't quite finished
5 this. I do recognize this concept.

6 Q. When you say you recognize that concept, what's the
7 concept?

8 A. Concept essentially is the same concept earlier.
9 It's an attempt to build a majority-minority
10 district without going into Durham or Wake.

11 (WHEREUPON, Exhibit 424 was marked for
12 identification.)

13 BY MS. EARLS:

14 Q. If you would take a look at what's been marked as
15 Exhibit 424. Again, I do happen to have extra
16 pages of the statistics. And this is a map and
17 statistics for NC Congress Dale District 1.

18 A. Yes.

19 Q. And this shows at least some more of the districts
20 sketched out; is that correct?

21 A. Uh-huh.

22 Q. Is this similarly as the previous map an attempt to
23 explore the concept of creating a Congressional
24 district in the northeastern part of North Carolina
25 that doesn't go into Durham or Wake counties?

1 A. That is what it would appear to be, yes.

2 Q. Do you recall seeing this map?

3 A. I certainly recall seeing versions of this. There
4 was -- this is -- is this -- yeah. Yeah, I've seen
5 versions of this.

6 Q. It's a draft plan because all the districts --

7 A. Correct.

8 (WHEREUPON, Exhibit 425 was marked for
9 identification.)

10 BY MS. EARLS:

11 Q. Would you take a look at what's been handed to you
12 and marked as Exhibit 425. This is -- am I right
13 it's labeled NC Senate Dale March 30?

14 A. It is.

15 Q. And there's two maps. There's a map that shows
16 part of the state and then a map that shows the
17 entire state but they both have the same title.

18 Do you recognize this map?

19 A. I'm not sure who drew this map. This is -- this is
20 not a map I would have approved because this is --
21 this map goes too far. It goes -- it goes from
22 Wayne into Lenoir through Goldsboro, so this
23 actually wouldn't have worked in the grouping.

24 Do you know who drew this?

25 Q. Again, all I can tell you is they were produced on

1 the disc of maps from Dr. Hofeller but it had your
2 name on it.

3 (WHEREUPON, Exhibit 426 was marked for
4 identification.)

5 BY MS. EARLS:

6 Q. And similarly, you're now looking at what's been
7 marked as Exhibit 426, and it's entitled Restored
8 Dale.

9 A. Yep.

10 Q. Again, I'm correct that's a Senate map?

11 A. Yep.

12 Q. Have you seen that map before?

13 A. I've seen something that looks close to this. I
14 recognize several of these districts. This is a
15 very early map. This has the Wilmington to Wayne
16 district in it, which I suspect is not at black
17 pop. Yes, that's correct. Then I recognize the
18 early split along Cumberland and Hoke.

19 It's an early version that was ultimately
20 not usable.

21 Q. Why was it not usable?

22 A. Well, for one thing, it only has two
23 majority-minority districts in the northeast. 13th
24 wasn't a majority-minority district so it wouldn't
25 work.

1 Those are two things that kind of jump out
2 about it, plus the groupings are not correct here.
3 This is not the most efficient use of the
4 groupings.

5 Q. I want to show you what's previously been marked as
6 Exhibit 213. This is from Senator Rucho's
7 deposition. And just I want to ask you if you've
8 seen that map before.

9 A. This appears to be the map I looked at a minute ago
10 because it has the Wilmington to Wayne district
11 creeping on through to Lenoir. It's very possible
12 I saw this district --

13 Q. And this --

14 A. -- this map.

15 Q. This was an early map of possible Senate districts?

16 A. Yes, but it wouldn't work in the groupings.

17 Q. Can I get that one back, just that one.

18 A. Sure. We want those, though, so we can copy.

19 MR. FARR: We've got it. We'll copy the
20 ones we don't have.

21 MS. EARLS: I don't think anyone's marked
22 this map.

23 (WHEREUPON, Exhibit 427 was marked for
24 identification.)

25 BY MS. EARLS:

1 Q. Exhibit 427 doesn't have statistics but it's a map
2 entitled NC House Dale A.

3 A. Uh-huh.

4 Q. Do you remember seeing that map?

5 A. I've already saw something that's very close to
6 this. This is obviously an attempt to draw with
7 the Wilmington district in. This -- again, we
8 couldn't -- the groupings don't work on this
9 because this has that long string across the top
10 that was not viable.

11 Q. Can you tell me what data you had available to you
12 when you were looking at these maps and evaluating
13 them?

14 MR. FARR: I am going to see what the
15 answer is.

16 Go ahead.

17 THE WITNESS: Usually could examine both
18 the political and all of the available Census data
19 when looking at the maps.

20 Obviously, if I'm assessing for voting
21 rights, which I typically was, I'm looking at the
22 population data, but it had the political data
23 available to me when I was doing it.

24 If I'm looking at groupings, I'm looking at
25 one person, one vote. Obviously, I'm looking at

1 the T pop data and I'm looking at the deviations
2 for the various districts.

3 BY MS. EARLS:

4 Q. Did you see Dr. Brunell's expert report?

5 A. I did.

6 Q. Did you see it before it was made final?

7 MR. FARR: I object and instruct him not
8 to answer that question.

9 BY MS. EARLS:

10 Q. What I am trying to get at is how early in the
11 process did you have information about racially
12 polarized voting in North Carolina.

13 A. Well, I didn't actually have to totally rely on
14 Dr. Brunell's report.

15 Q. What other source of information did you have?

16 A. Well, first off, we had the map and report that you
17 actually delivered which provided a great deal of
18 information. We also had a number of election
19 results which we could already see that could
20 inform us, so as we then gathered more reports, it
21 just was more data that actually verified the
22 points.

23 Q. Other than what you've just mentioned, did you have
24 information about the extent to which African
25 Americans had been elected in North Carolina?

1 A. I think that probably covered most of it. There
2 may have been more, but that's what comes to my
3 mind at the moment.

4 Q. I want to ask you about another exhibit that's been
5 introduced in the case. It's Exhibit 55 to the
6 deposition of Erika Churchill, and I have it here
7 so if you just give me a moment.

8 I'm handing you in a bound volume what's
9 previously been marked in this case as Exhibit 55.
10 And I'll tell you these are the public statements
11 that were issued regarding the maps.

12 Did you have any role in drafting any of
13 those statements?

14 A. I saw them before they were released.

15 Q. Did you have any other role besides seeing them
16 before they were released?

17 A. I reviewed them before they were released, yes.

18 Q. Did you give legal advice about what they should
19 say?

20 MR. FARR: Objection.

21 THE WITNESS: I'm certain that's going to
22 draw -- yeah.

23 BY MS. EARLS:

24 Q. Were the statements revised -- the final statements
25 of the statements, did those differ from the drafts

1 that you saw before they were released?

2 MR. FARR: Objection; instruct you not to
3 answer the question.

4 (WHEREUPON, Exhibit 428 was marked for
5 identification.)

6 MS. EARLS: Again, I don't have copies.

7 MR. FARR: We'll just make copies.

8 THE WITNESS: DOJ letter.

9 BY MS. EARLS:

10 Q. You've been handed what's been marked as
11 Exhibit 428. Am I right that that is a copy of an
12 objection letter that the Department of Justice
13 issued earlier this year regarding a redistricting
14 in --

15 A. Nueces county.

16 MR. FARR: Can you spell that for the
17 court reporter.

18 THE WITNESS: That is Nueces, N-U-E-C-E-S.

19 BY MS. EARLS:

20 Q. And you are one of the attorneys that the letter is
21 addressed to?

22 A. That is correct.

23 Q. So you were advising the jurisdiction in its
24 redistricting process?

25 A. I was.

1 Q. And I ask you to look -- there's a paragraph -- I'm
2 sorry, I don't have a copy, but if I can just look
3 at it for a moment I will tell you which paragraph
4 I want you to look at.

5 If you would look at the last paragraph on
6 page 3 and there -- I'll give you a moment to read
7 it, if you'd like.

8 A. Yes, I've read it.

9 Q. And I'm correct that the Department of Justice in
10 that letter recounts that the county departed from
11 its prior procedure by only considering one plan
12 during its redistricting process.

13 A. That's not correct.

14 Have you talked to Mr. Garza or the
15 Department of Justice as to how this matter was
16 resolved?

17 Q. Well, I'll let you tell me how it was resolved, but
18 I want to ask the question about the departure from
19 the usual procedure. And in fact, what --

20 A. The other plans were considered. The other plans
21 had a deviation that was unacceptable and therefore
22 they were not used.

23 Q. And so then how was the matter resolved?

24 A. The matter was resolved by negotiation as a result
25 of our suit in the DCBC in which we settled on a

1 plan that produced virtually the same plan that was
2 done here with the change of three precincts. It's
3 actually less than one and one half percent
4 different than the map that was actually passed.

5 Q. The only thing I want to understand about the
6 redistricting process that you were involved in is
7 other than -- you've talked about Dr. Hofeller
8 doing this analysis which in fact you could see on
9 the computer yourself about where the
10 concentrations of minority population existed and
11 we have the statements that we looked at,
12 Exhibit 55, that were statements released at
13 various points during the process.

14 Were there any other documents or guidance
15 regarding redistricting criteria that you were
16 using or following during the redistricting
17 process?

18 MR. FARR: Objection. You can certainly
19 ask Dr. Hofeller that question.

20 MS. EARLS: Okay. I have no further
21 questions.

22 MR. SPEAS: I actually have a couple
23 follow-up questions, if I may.

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1 FURTHER EXAMINATION

2 BY MR. SPEAS:

3 Q. Mr. Oldham, I want to try to understand the
4 process, and as I hear you testify, the process
5 worked this way: Dr. Hofeller or perhaps Mr. Raupe
6 or Mr. Morgan would draw a map, they would give it
7 to you and you would advise them as to the legal
8 sufficiency of that map; is that correct?

9 MR. FARR: Objection; instruct you not to
10 answer that question.

11 BY MR. SPEAS:

12 Q. Did you in the course of working with Dr. Hofeller
13 ever suggest to Dr. Hofeller how he might draw a
14 map?

15 MR. FARR: Objection.

16 MR. SPEAS: Instruct him not to answer?

17 MR. FARR: I do.

18 BY MR. SPEAS:

19 Q. In the course of working with Mr. Morgan, did you
20 ever suggest to Mr. Morgan how he might draw a map?

21 MR. FARR: Objection.

22 BY MR. SPEAS:

23 Q. In the course of talking to Mr. Raupe, did you ever
24 make a suggestion to him about how he might draw a
25 map?

1 MR. FARR: Objection.

2 BY MR. SPEAS:

3 Q. In the course of working with Mr. Raupe, did
4 Mr. Raupe ever reject your suggestions?

5 MR. FARR: Objection.

6 BY MR. SPEAS:

7 Q. In the course of working with Mr. Morgan, did
8 Mr. Morgan ever reject your suggestions?

9 MR. FARR: Objection.

10 BY MR. SPEAS:

11 Q. In the course of working with Mr. Hofeller, did
12 Mr. Hofeller ever reject your suggestions?

13 MR. FARR: Objection.

14 BY MR. SPEAS:

15 Q. In the course of working with Senator Rucho, did
16 Senator Rucho ever reject your suggestions?

17 MR. FARR: Do I really have to object to
18 that? Isn't that clear that's an attorney-client
19 communication?

20 I instruct you not to answer that question.

21 BY MR. SPEAS:

22 Q. In the course of working with Representative Lewis,
23 did Representative Lewis ever direct you to -- in
24 the course of working with Representative Lewis,
25 did Representative Lewis ever reject your

1 suggestions?

2 MR. FARR: Do you understand how to
3 respond to that?

4 THE WITNESS: Yes. Counsel has already
5 objected to that.

6 BY MR. SPEAS:

7 Q. Okay. In the course of reviewing maps, did you sit
8 down with Mr. Farr to review maps?

9 MR. FARR: Objection.

10 BY MR. SPEAS:

11 Q. In the course of advising Senator Rucho, did you
12 sit down and work with Mr. Farr?

13 MR. FARR: Objection.

14 BY MR. SPEAS:

15 Q. In the course of working with Representative Lewis,
16 did you sit down and work with Mr. Farr?

17 MR. FARR: Objection.

18 BY MR. SPEAS:

19 Q. In the course of working with Mr. Morgan, did you
20 sit down and work with Mr. Farr?

21 MR. FARR: We'll stipulate that Dale and I
22 sat down and worked together.

23 Otherwise, I instruct you not to answer the
24 question.

25 THE WITNESS: I understand.

1 BY MR. SPEAS:

2 Q. Who was the principal drawer of the House maps?

3 A. That would be Dr. Hofeller.

4 Q. Who was the principal drawer of the Senate maps?

5 A. That would still probably be Dr. Hofeller, but

6 there was more input from other people.

7 Q. Who were those other people?

8 A. Well, in particular, John Morgan.

9 Q. And who was the principal drawer of the

10 Congressional maps?

11 A. That would, again, be Dr. Hofeller.

12 Q. Did anybody assist Dr. Hofeller in drawing

13 Congressional maps?

14 A. Define "assist."

15 Q. Did anybody sit down at a computer and work with

16 Dr. Hofeller under Dr. Hofeller to draw districts?

17 A. A number of people watched at times while

18 Dr. Hofeller drew districts.

19 Q. Did Dr. Hofeller watch while others drew districts?

20 A. No, I don't think so. I probably shouldn't answer

21 that that emphatically, but not that I can recall.

22 Q. Just to be clear, with regard to the House maps,

23 you testified that Dr. Hofeller was the principal

24 map drawer. Was there an assistant map drawer on

25 the House maps?

1 A. No.

2 Q. How many days was Dr. Hofeller in North Carolina

3 during the redistricting process?

4 A. I don't know the answer to that.

5 Q. How many days were you in North Carolina during the

6 redistricting process?

7 A. I don't really know the answer to that one. I

8 could probably figure it out, but it was a lot.

9 Q. Was the North Carolina project your principal

10 project between January and July 2011?

11 A. No.

12 Q. What other projects were you engaged in?

13 A. I will not list my other clients.

14 Q. Did you ever meet with Art Pope?

15 A. I know Art Pope.

16 Q. Did you ever meet with Art Pope with regard to

17 redistricting?

18 A. Well, I have met with Art Pope. I talked to

19 Mr. Pope on a variety of topics.

20 Q. Did you talk to him about redistricting?

21 A. I have talked to him about redistricting.

22 Q. Did you have an attorney-client relationship with

23 Art Pope?

24 A. I believe I do. Actually, I think I have --

25 Mr. Farr.

1 MR. FARR: Mr. Pope associated with me at
2 some point in time during the process as co-counsel
3 for the leadership.

4 BY MR. SPEAS:

5 Q. So the attorneys advising Senator Rucho and
6 Representative Lewis during this process were you,
7 correct?

8 A. Correct.

9 Q. Mr. Farr?

10 A. Correct.

11 Q. Art Pope?

12 A. Correct.

13 Q. Mr. Strach?

14 A. Correct.

15 Q. Anybody else?

16 A. Mr. Woodcox, Mr. Kay.

17 Q. I'm sorry?

18 A. And Mr. Kay.

19 Q. Mr. Carvin?

20 A. Kay.

21 Q. No. I understood your answer.

22 And Michael Carvin?

23 A. Mr. Carvin came into the process later.

24 Q. After the plans were enacted?

25 A. Yes.

1 Q. I think -- well, no, that's not all my questions.

2 Have you ever testified as an expert

3 witness?

4 A. No.

5 MR. SPEAS: Thank you, Mr. Oldham.

6 THE WITNESS: Thank you.

7 [SIGNATURE RESERVED]

8 [DEPOSITION CONCLUDED AT 1:29 P.M.]

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1 A C K N O W L E D G E M E N T O F D E P O N E N T

2

3 I, Dale Oldham, Esq., declare under the
4 penalties of perjury under the State of North
5 Carolina that I have read the foregoing 127 pages,
6 which contain a correct transcription of answers made
7 by me to the questions therein recorded, with the
8 exception(s) and/or addition(s) reflected on the
9 correction sheet attached hereto, if any.

10 Signed this the day of , 2012.

11

12

13

DALE OLDHAM, ESQ.

14

15

16 State of:

17 County of:

18 Subscribed and sworn to before me

19 this day of , 2012.

20

21

22

23 Notary Public

24 My commission expires:

25

E R R A T A S H E E T

Case Name: NAACP vs. State or North Carolina, et al. and
Margaret Dickson et al. vs. Robert Rucho, et al.
Witness Name: Dale Oldham, Esq.
Deposition Date: June 27, 2012

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1 STATE OF NORTH CAROLINA)
) C E R T I F I C A T E
2 COUNTY OF WAKE)

3

4 I, DENISE L. MYERS, Court Reporter and
5 Notary Public, the officer before whom the foregoing
6 proceeding was conducted, do hereby certify that the
7 witness(es) whose testimony appears in the foregoing
8 proceeding were duly sworn by me; that the testimony
9 of said witness(es) were taken by me to the best of
10 my ability and thereafter transcribed under my
11 supervision; and that the foregoing pages, inclusive,
12 constitute a true and accurate transcription of the
13 testimony of the witness(es).

14 I do further certify that I am neither
15 counsel for, related to, nor employed by any of the
16 parties to this action, and further, that I am not a
17 relative or employee of any attorney or counsel
18 employed by the parties thereof, nor financially or
19 otherwise interested in the outcome of said action.
20 This the 6th day of July 2012.

21

22

23

24 Denise L. Myers
 My commission expires 9/14/2013

25